

The Divine Courtroom in Comparative Perspective

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The Divine Courtroom in Comparative Perspective

Edited by

Ari Mermelstein and Shalom E. Holtz



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Introduction: The Divine Courtroom in Comparative Perspective

Ari Mermelstein and Shalom E. Holtz***

On February 5–6, 2012, the Leonard and Bea Diener Institute of Jewish Law at Cardozo School of Law and the Yeshiva University Center for Jewish Law and Contemporary Civilization hosted a conference, “The Divine Courtroom,” at the Benjamin N. Cardozo School of Law. This volume brings together written and edited versions of some of the presentations made during those two days of highly stimulating academic interaction.

We find it useful to begin this introduction with the summary remarks delivered by Adam Becker of New York University as the conference’s conclusion.¹ Commenting on the general significance of the subject, Becker noted that scrutiny of the divine courtroom motif addresses some of the major questions of interest to religionists from all periods and disciplines. How do different communities imagine God? What are the resources at their disposal for doing so? What are the various historical factors that condition the religious imagination? In short, exploring the divine courtroom gives entry into the very core of the modern study of religion.

The diversity of the phenomenon of the divine courtroom goes a long way in explaining its value as a topic of study. Specialists studying human cultures and religions from nearly every period of time and almost all locations can find common ground for discussion of the divine courtroom. In fact, only a broad comparative approach—one that requires cross-disciplinary conversations like the ones our conference provoked—can make sense of the larger religious phenomenon. We offer this volume to demonstrate this diversity and its value as well as to stimulate others to continue our efforts to interpret and understand this central aspect of many religious worlds.

One initial stimulus for our own investigations of the divine courtroom, the conference and, ultimately, this volume, comes from Meira Z. Kensky’s

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1 We are grateful to Professor Becker for sharing his informal written notes with us and for allowing us to use them here.

monograph *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature*.² As the title of her book suggests, Kensky argues that “when man is tried, it is truly God who is on trial.”³ With this observation, Kensky advances the discussion of the divine courtroom’s very significance. The divine courtroom represents more than a description of justice, or the place where God hands down true rulings to humanity. Instead, as a literary motif, the divine courtroom “is a way to try God in the court of the reader.”⁴ In other words, depictions of trials in the divine courtroom function as demands for justice from God.

Several of the essays in this volume draw directly on Kensky’s insights. Dov Weiss and Chaya Halberstam both study divine trial scenes in rabbinic literature to argue that, in one way or another, not only humans stand in the dock, but God does, too. At the conclusion of his Kenskyan reading of three passages from post-amoraic midrash, Weiss cites what is perhaps the most explicit support for Kensky’s thesis in rabbinic literature, R. Reuben’s re-reading of Isa 66:16 as a reference to the ultimate judgment of the gentiles, with emphasis on the passive verb: “It does not say ‘the Lord judges’ (שופט) but ‘the Lord is judged’ (נשפט)” (*Song Rab.* 2:1). Similarly, Halberstam exposes how certain passages in *Sifre Deuteronomy* probe the limitations of pure procedural justice in the divine courtroom. Kensky, in her own contribution here, elucidates the multi-layered use of both human and divine courtrooms in Tertullian’s *Apologeticum*, where the genre itself implies a trial and invites Christian readers to side with God against the Roman adjudicators. Andrew Lincoln’s exploration of the tension between the real and implied readers of the Gospel of John invokes Kensky’s observations on how real readers may not always follow an author’s guidance regarding how they should judge God in a trial scene. The implied readers of John are meant to share God’s positive judgment of Jesus; in the words of 20:31, to “believe that Jesus is the Messiah, the Son of God.” For real readers, however, the history of interpretation of this Gospel shows that the case remains far from closed.

Lincoln’s use of Kensky highlights the direct connections between her specific theory and the methods of literary criticism. She arrives at her understanding of the divine courtroom as a reader and interpreter of ancient sources. If there is one methodological approach that unites all the essays in this volume it is that all of them present readings of primary texts. In the first instance, then,

2 M. Z. Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (WUNT 2/289; Tübingen: Mohr Siebeck, 2010).

3 Ibid., 5.

4 Ibid., 343.

the divine courtroom is a literary phenomenon. Each essay demonstrates, via its own readings, how the divine courtroom can be a productive lens through which to read. Most basically, every essay explores how the divine courtroom functions as a creative tool within written work.

The general value of the divine courtroom as a perspective on literature is matched by its particular place within the biblical tradition. Most of the essays treat this tradition, either in the Hebrew Bible itself or in later interpretations. In the former category are the essays by Job Jindo (a descriptive analysis of the biblical motif, in general), Rachel Magdalene (on Naboth's vineyard), Carol Newsom (on the Book of Job) and Joseph Angel (on Daniel 7). In the latter are the essays on rabbinic midrashim by Weiss and Halberstam, as well as those of Lincoln, who exposes the Gospel of John's readings of the trial scenes in Second Isaiah, and Warren Zev Harvey, who addresses the divine courtroom in comments by Rabbi Nissim of Girona (Ran), a fourteenth-century Jewish authority. Harvey's essay presents not only Ran's reading of a biblical text (Genesis 18), but also Ran's interpretation of a text from the rabbinic interpretive tradition, the legend in *b. B. Mešī'a* 86a. Mathieu Tillier's essay on Islamic sources fills out the scope of the history of biblical interpretation, especially when it considers the antecedents for these sources in late antique Christianity. And, although the Mesopotamian incantations that Tzvi Abusch discusses pre-date the biblical materials, these Mesopotamian texts probably represent the biblical divine courtroom's point of origin, given the Hebrew Bible's place within the continuum of ancient Near Eastern literature. Did this very same continuum give rise to the Greek sources' ambivalence or antipathy towards divine judges identified by Victor Bers and Adrian Lanni?

Whether or not all of the sources that this volume considers belong to one and the same stream of tradition, the Jewish, Christian and Islamic texts certainly do. To what extent, then, is the divine courtroom simply a feature of biblical texts and their interpretation? Does it reflect a tradition's engagement with aspects of culture and ideology broader than its sacred literature? Does it exist, as it were, beyond the texts?

The essays here, considered in the aggregate, offer different answers to this question. Joseph Angel's efforts to untangle the relationship between Daniel 7, Ezekiel 1, *1 Enoch* 14, and the *Book of the Giants* from Qumran shows just how complicated the problem is. On the one hand, overt similarities between the texts suggest direct dependence, even though, on the other hand, textual and contextual differences point to independent manipulation of much earlier sources. Newsom highlights innovation, rather than tradition: the Book of Job transcends biblical antecedents from Jeremiah and the Psalms to invent the "previously unthinkable idea" of bringing God to trial. And, as Halberstam and

Weiss both show (following Kensky), once the unthinkable has been thought, it becomes a productive avenue for theology. Their rabbinic examples illustrate Newsom's point that "the world of intellectual possibilities is forever changed by the work that Job has done."

Trying God in the divine courtroom, as Job does, is just one biblical context in which the divine courtroom appears. The divine courtroom touches on practically every aspect of biblical theology, including, of course, theodicy and judgments in the afterlife and the end times, but extending well beyond to concepts like prophecy, prayer, law, and covenant. According to Jindo, "the biblical motif of divine justice and the courtroom is part of a complex paradigm of divine kingship through which biblical authors structured how they lived and how they understood life and reality." Given Jindo's wide-ranging assessment, we may justifiably inquire about how different literary or theological contexts make use of the divine courtroom motif. How does the notion of encountering God in court relate to other forms of piety, such as prayer? Joseph Heinemann famously identified forms of talmudic prayer that are patterned after legal petitions.⁵ Yet as Newsom notes in her contribution, traditional forms of piety, such as prayer, entail a different sense of human agency than the possibility of actively engaging God in his courtroom.

Both as literary feature and as a theological phenomenon, the divine courtroom reflects attempts to explain the universe in human terms. As such, the divine courtroom motif opens up questions pertaining to metaphor. Most fundamentally, Jindo questions the applicability of the very term "metaphor," at least on heuristic grounds, since it disserves a proper description of Israelite religion. Even if Jindo eschews the "sense of 'projected-ness'" that the label "metaphor" implies, projecting by drawing connections between the human and divine courtrooms makes eminent sense. Doing so allows us to appreciate the sources' literary artistry and theological sophistication. Thus, Abusch focuses on the legal grounds for the lawsuit against the witch in *Maqlû*, the Mesopotamian anti-witchcraft ritual, and traces the progress of the lawsuit from preliminary hearing to trial and judgment. Similarly, Magdalene identifies the specific points of law operating in the narrative of Naboth's vineyard.

Just how similar are the divine and the human courtrooms? According to both Magdalene and Abusch, there is intentional continuity between the laws that operate in both spheres. The divine courtroom is a venue of last resort, a place to obtain justice when human courts are not effective. Similarly, as Newsom observes, bringing God to trial levels the playing field between

5 Joseph Heinemann, "Law Court Patterns in Prayer," in *Prayer in the Talmud* (SJ 9; Berlin: de Gruyter, 2012), 193–217.

Job and an all-powerful God, just as human courts are places where class differences are set aside. Other sources, however, suggest that the divine courtroom cannot breach the human-divine chasm. According to Harvey, Ran's readings expose and exploit these very differences: deliberations in the divine academy have no bearing on human law, and, in Genesis 18, divine justice would have led to human disaster. Classical Greek sources, according to Bers and Lanni, go even further; they avoid connecting immortal gods with the serious business of judging humanity: "the Olympians lacked, and would continue to lack, an appreciation of the gravity of the events in any mortal's brief life."

The "projection" of the human court onto the divine courtroom is necessarily a matter of human religious imagination. Not so when one reverses the direction of the analogy by considering the "real life" effects of the divine courtroom on human adjudication. Invoking divine judgment insures against judicial corruption and abuse of power. Divine judgment serves to restore true justice and put authorities back in their places, as seen in Magdalene's reading of the Naboth story, Kensky's discussion of Tertullian, and Lincoln's analysis of the Gospel of John. According to Tillier, fear of ultimate divine justice keeps Islamic adjudicators in line, and even has practical ramifications in the court, such as prayers before entering judgment and judicial displays of personal piety. At the same time, though, Tillier shows how divine justice served the judges, too. By enhancing their prestige as partners with God-the-judge, invoking God's court was a first step toward eventual judicial autonomy from the political authorities. Here, one is reminded of Moses' admonition to his own judicial appointees: "You shall not be partial in judgment: hear out low and high alike. Fear no one, for judgment belongs to God!" (Deut 1:17).

By bringing the divine courtroom into dialogue with human adjudication, religious communities draw on their spiritual imagination to answer some of the most pressing questions about law: What is justice? What are the aims of a legal system? What are the limits of law in ordering society? Thus, study of the divine courtroom promises insights not only into subjects within the realm of religion—theodicy, the afterlife, the relationship between heaven and earth, to name just a few—but also into topics pertaining to law. Students of ancient law cannot avoid consideration of its extra-human dimensions.

Divine Judges on Earth and in Heaven

*Tzvi Abusch**

In this volume on the divine court in various cultures and historical periods, I shall draw my illustrations of the divine court in ancient Mesopotamia from a well-known magical ceremony. In much of the Akkadian prayer and incantation tradition, experiences originally unrelated to law or the law court are perceived through, molded by, and integrated into a view of reality generalized from the legal sphere of life and are expressed in images drawn from that sphere. This is particularly true of texts that counteract witchcraft; there, when the conflict is imagined as a dispute, the witch and her victim become legal adversaries and the conflict becomes a legal conflict.

I should begin by saying that when I began thinking about how I should approach the topic of gods sitting in judgment for this conference, I found that my thoughts kept going back and forth between the images of gods as judges here on earth and in the heavens. I kept on wondering about the relationship of the two settings and the nature of the gods in each. I thought of treating the different images and functions of the gods both phenomenologically and historically.¹ But in the end I concluded that I could serve the purpose of the conference best by focusing on one text that contains the several images and settings that are of interest. I will examine a few Akkadian magical incantations in which an individual god or group of gods is asked to render a judgment,

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I thank the conference organizers for the opportunity to rethink some of my earlier work in the context of a conference on the divine court. I am grateful to my student Bronson Brown-deVost for his helpful suggestions and technical help in the preparation of this paper.

1 See F. Rochberg, "The Stars Their Likenesses: Perspectives on the Relation Between Celestial Bodies and Gods in Ancient Mesopotamia," in *What is a God?: Anthropomorphic and Non-Anthropomorphic Aspects of Deity in Ancient Mesopotamia* (ed. B. N. Porter; Winona Lake, Ind.: Eisenbrauns, 2009), 41–91, and eadem, "The Heavens and the Gods in Ancient Mesopotamia: The View from a Polytheistic Cosmology," in *Reconsidering the Concept of Revolutionary Monotheism* (ed. B. Pongratz-Leisten; Winona Lake, Ind.: Eisenbrauns, 2011), 117–36; and cf. I. T. Abusch, "Alaktu and Halakhah: Oracular Decision, Divine Revelation," *HTR* 80 (1987): 32 and n. 57.

but I will also survey the several settings of the divine court and see the development from one setting to the next.

I shall draw my material from *Maqlû*, the longest and most important Mesopotamian text concerned with combating witchcraft. *Maqlû* comprises eight tablets of incantations (I–VIII) and a ritual tablet (RT).² The incantation tablets record the text of almost one hundred incantations; in the ritual tablet, these incantations are cited by incipit, and alongside each citation appropriate ritual directions are prescribed. The present form of *Maqlû* is, I believe, a creation of the first millennium BCE, though a divergent proto-form may have already existed in Assur towards the end of the middle Assyrian period.

Long thought to be a random collection of witchcraft materials, an important breakthrough in the understanding of *Maqlû* came with my discovery that it was a single complex ceremony.³ The ceremony was performed during a single night and into the following morning at the end of the month Abu (July/August), a time when spirits were thought to move back and forth between the netherworld and this world. This ceremony is even the subject of a letter written by the exorcist Nabû-nâdin-šumi to King Esarhaddon in early August 670 BCE. The primary participants were the exorcist, who both organizes and participates in the ceremony, and his patient (who on occasion might be the king).

In the main, the incantations and rituals of *Maqlû* are directed against witches and witchcraft. The ceremony was intended to counteract and dispel evil magic and its effects, to protect the patient, and to punish and render ineffectual those responsible for the evil.

The series is composed of three major divisions. The first two divisions were performed during the night, and the third during the early morning hours of the following day. The ceremony took place on the estate of a member of the upper class or in the royal court.

The incantations against the witch here in *Maqlû*, specifically, and in the Mesopotamian anti-witchcraft corpus of rituals, generally, are based on various themes and take various forms. One of the most striking and important themes is the destruction of the witch in effigy. As expected in a ritual in which burning is a repetitive and central act, the destruction of this evil enemy achieves concrete literary form in various incantation types that center upon

2 I cite the text and line count of *Maqlû* from my forthcoming edition in the Brill series, "Ancient Magic and Divination."

3 See my "Mesopotamian Anti-witchcraft Literature: Texts and Studies, Part I: The Nature of *Maqlû*: Its Character, Divisions, and Calendrical Setting," *JNES* 33 (1974): 251–62 = *Mesopotamian Witchcraft: Towards a History and Understanding of Babylonian Witchcraft Beliefs and Literature* (Ancient Magic and Divination 5; Leiden: Brill/Styx, 2002), 99–111.

burning. The motif of the burning of the witch in various permutations and elaborations occurs in almost every incantation of I 73–IV 151. A well-known type is the address to the fire god (Girra), in which he is described and called upon to destroy the witch (e.g., II 19–149). Here, destruction by fire has been joined to the motifs of judgment and execution. Let us, therefore, select as our first incantations two short and simple examples of judgment featuring the fire god. Later we shall examine two more complex incantations (I 1–36 and I 73–121) that call on the gods for a judgment against the witch.

II 127–34 read:

- 127 Incantation. O powerful Girra, wild (fire-)storm,
- 128 You give correct decisions to gods and rulers,
- 129 You provide justice for the oppressed man and woman.
- 130 Stand by me in my judgment like Shamash, the warrior,
- 131 Judge my case, render my verdict.
- 132 Burn my warlock and my witch,
- 133 Devour my enemies, consume my oppressors!
- 134 Let your raging (fire-)storm vanquish them.

Our second example is the first half of the incantation II 105–25. Lines 105–16 read:

- 105 Incantation. O blazing Girra, warlike son of Anu,
- 106 Indeed you are the fiercest among your brothers.
- 107 As you decide lawsuits in the stead of Šin and Shamash,
- 108 Judge my case, hand down my verdict.
- 109 Burn my warlock and my witch,
- 110 Girra, burn my warlock and my witch,
- 111 Girra, scorch my warlock and my witch,
- 112 Girra, burn them,
- 113 Girra, scorch them,
- 114 Girra, vanquish them,
- 115 Girra, consume them,
- 116 Girra, consume them completely!

In these incantations, raging fire is viewed, experienced, and addressed as a judge and executioner. These addresses begin with characterizations of the god, comparable (in a somewhat attenuated way) to the statements of praise at the beginning of many Akkadian prayers, especially those of the Shuilla type. The statements focus on those functions and characteristics that lend the

fire god the ability and standing to give judgments and to wreak destruction on the evildoer. The speaker then asks the god to give a judgment and to destroy his enemy. Notice that no justification is sought. Here, I guess, the judgment is primitive. These addresses to the god have a primitive aristocratic world as their setting. It seems to me that the god functions more as a warlord than as a civilian judge.

In this context, the fire god may act together with Ea and Asalluhi, gods of water and magic. For example, V 112–24:

- 112 Incantation. My sorcerers, my sorceresses,
- 113 My warlocks, my witches,
- 114 You whose heart has planned evil against me,
- 115 You keep on seeking tricky spells against me,
- 116 You have bound my knees with evil sorcery.
- 117 In order to release the witchcraft and spittle against me, having
(first) turned to Girra at the word of Ea and Asalluhi, (now)
- 118 With spring water, I quench your heart,
- 119 I extinguish your mood,
- 120 I take out the ardor of your heart,
- 121 I confound your understanding,
- 122 I unravel your thinking,
- 123 I burn your witchcraft,
- 124 I cause you to abandon the plots of your heart.

In this incantation, the speaker tells us that he has gone back to Ea and Asalluhi, now that Girra has completed the task assigned to fire, in order to make sure that the witches are completely deprived of life and power. Here, accompanying the ritual act of pouring water upon the glowing embers, Ea and Asalluhi are seen overshadowing the judgment in the fullest sense of the word; for just as they initiated it by sending the victim to Girra (cf., e.g., *Maqlû* III 55–60, IV 1–13), so, too, do they themselves carry out the final stages of its execution.

Or, again, in V 89–97, Girra functions as part of this early grouping of gods:

- 89 Incantation. [Ea has (now) unbound] the ligaments that you have
bound up,
- 90 [Asalluhi has (now) released] the images that you have twisted and
fettered.
- 91 The knot that you have knotted against me, the pl[ot that you have
plotted against me]

- 92 May blazing Girra ca[use the wind to carry off],
 93 May Nuska, the judge, the mas[ter of exorcism],
 94 [Turn back] up[on your head] the sorcery that you have performed
 against me.
 95 My witchcraft is released, [my enchantment is] c[leared],
 96 With spring water, [I undo your 'spitt]le,'
 97 I have (now) become pure, cl[ean, and innocent in the presence of
 Nuska] and Girra, [the (divine) judges.]

Finally, the group of gods comprising Shamash, the sun god, Ea and Asalluhi, gods of water, and Girra, the fire god, is invoked at the conclusion of the first division of *Maqlû* as the authority in whose name the evil force is adjured to depart and remain distant.

- 171 By the life of Shamash, the honorable, be adjured,
 172 By the life of Ea, lord of the underground springs, be [adju]red,
 173 By the life of Asalluhi, the magus of the gods, be adjured,
 174 By the life of Girra, your executioner, be adjured!
 175 From my body you shall indeed be separated!

Thus far, I have been treating *Maqlû* in its standard first millennium form. But that form is the final recension of a work that began with a much more limited view of the world. The long ceremony that I have described grew out of an earlier short ritual.⁴ Actually, Shamash, the sun god, Ea and Asalluhi, gods of water, and Girra, the fire god, were the most important gods in that earlier version, and the last three incantations from which I have quoted here (V 112–31, 89–97, and 158–75) originate in that version.

This original short version was performed in the morning. Subsequently, the ceremony was transferred to the nighttime. The work was then adapted as a nighttime ritual and expanded significantly. The adaptation of the short morning version to nighttime use and the expansion of the ceremony and text to allow the performance to be extended throughout the night and into the following morning were decisive for the development of the text of *Maqlû* as well as for the development of the framework, orientation, and texture of the ceremony.

4 See T. Abusch, "An Early Form of the Witchcraft Ritual *Maqlû* and the Origin of a Babylonian Magical Ceremony," in *Lingering Over Words: Studies in Ancient Near Eastern Literature in Honor of William L. Moran* (ed. T. Abusch, J. Huehnergard, and P. Steinkeller; HSS 37; Atlanta: Scholars Press, 1990), 1–57 = *Mesopotamian Witchcraft*, 113–62.

The polarity of day and night came increasingly to the fore and altered the concerns, images, and conception of the work. The composition is now set in a new setting and takes on a new structural form in line with this setting. The long version has a cosmic setting and involves the participation of many gods. Each of the three newly created divisions is fitted with introductory and concluding sections, and is framed by, or moves between, a different set of cosmic poles. Each of the divisions of *Maqlû* now moves between two opposing cosmic poles: the first night division is oriented toward the heavenly (night) court of Anu and the netherworld court of Ereškigal; the second night division, toward the heavenly court of Enlil and the chthonic Ekur; and the third or new daytime division, toward the court of Shamash and his retinue in the morning sky and the subterranean abyss, the Apsu, of Ea and Asalluḫi.

Whereas the original version had no astral associations and involved only a small group of earth centered gods (among whom I reckon Shamash, the sun god), judgment in the final version is no longer limited to an earth centered court but now also includes the heavens. The framework of judgment has expanded from a divine terrestrial court to one which now encompasses the night sky in all its facets. It is even possible that the orientation has become wholly astral and that our three courts have been transposed into positions within what Babylonian astronomy termed the paths of Anu, Enlil, and Ea. The paths cross the sky from east to west, and the stars travel along these paths. (The three paths have twelve segments, one for each month, and each segment is characterized by the heliacal rising of a star.)⁵

I have reconstructed the stages of development of the ceremony and the text. I note here a few of the changes in the relative order in which the changes took place.

1) A new introduction, I 1–72, oriented to the night sky of Anu, was added. The address to the gods of the night sky, I 1–36, opens this new introduction.

2) The major portion of Tablets VII 58–VIII 141", the third division, was added for use in the morning. The incantations of this division assume an early morning setting, and many invoke Shamash, the sun god, in addition to the gods of water, Ea and Asalluḫi.

3) The original opening, I 73–121, originally addressed to Shamash, the sun god and judge par excellence, was readdressed to Nuska, the god of the protective lamp.

5 For the heavenly paths, see E. Reiner and D. Pingree, *Enūma Anu Enlil, Tablets 50–51 = Babylonian Planetary Omens: Part 2* (BMes 2/2; Malibu: Undena, 1981), 6–8 and 17–18, and W. Horowitz, *Mesopotamian Cosmic Geography* (Mesopotamian Civilizations 8; Winona Lake, Ind.: Eisenbrauns, 1998), 165, 170, and 252.

4) Nuska now even eclipsed Ea and Asalluhi, the gods of Eridu, by the important role he assumed in the expanded first division (e.g., II 1–17; V 149–51) and elsewhere (RT 146'–47'). Moreover, with his introduction, the cast of gods was even further expanded, for Nuska belongs to the Enlil circle of the Ekur in Nippur. Thus, for example, Enlil and his astral retinue now appear in the introduction and conclusion of the second division, and the temple community of the Ekur recurs in several incantations.

There is thus a shift of focus—perhaps a gradual one—from the terrestrial plane to the astral one. For while the early version has a terrestrial setting, the later version has an astral one. With the projection of the divine court into the heavens, the center of the pantheon moves from earth to heaven. But even with this change of locus, divine judgment and execution remain important images of divine activity.

The two most important pleas for judgment in this new work are I 1–36 and I 73–121, the former composed specifically for the new version, the latter carried over from the older version and revised. But before taking up these incantations, I would remind you of two factors that we should take into account when we examine any incantation or prayer, but certainly when we study these two incantations. These considerations may limit any approach that claims to treat an incantation or prayer as a stand-alone speech.

1. History. Incantations often undergo changes. In general terms, one may say that often the change of a text will reflect a change of ideas, a change of purpose, and/or a change of ritual usage. In the case of *Maqlû*, some of the incantations that were originally recited in the morning and had a daytime orientation were adapted for nighttime use. Even incantations that were taken up into the expanded text may have gone through changes either before or after their incorporation into *Maqlû*.

2. Ritual context. In principle, incantations and prayers (or, at least, types, if not specific texts) were created with rituals in mind. Most incantations were part of relatively simple ceremonies, and often there is a meaningful relationship between incantation and ritual, a relationship, that is, between what is said and what is done. But an incantation that is part of a long and complex liturgy, especially one that has experienced change through time, becomes more nuanced and complex in meaning and requires both logic and sensitivity in teasing out its meaning. So, while the meaning of an incantation should be determined on the basis of what the words actually say, context matters, and ancient liturgists may have set an incantation into a context in which its meaning or role is different from or has been extended beyond its original purpose (and perhaps even beyond the actual wording of the text).

Bearing these two considerations in mind, let us now examine I 1–36 and I 73–121.⁶ The first is the new introduction that has been added on to the work; the second is the original introduction and judgment that has now been displaced and revised. In the context of the final long ceremony, I would treat the first incantation, I 1–36, as a preliminary hearing and the second incantation, I 73–121, as the main hearing. Accordingly, let us begin with the preliminary hearing and then continue with the main hearing.

I 1–36 read:

- 1 Incantation. I call upon you, Gods of the Night,
- 2 With you I call upon Night, the veiled bride,
- 3 I call upon Twilight, Midnight, and Dawn.
- 4 Because a witch has bewitched me,
- 5 A deceitful woman has accused me,
- 6 (Because) she has (thereby) caused my god and goddess to be estranged from me (and)
- 7 I have become sickening in the sight of anyone who beholds me (and)
- 8 I am (thus) unable to rest day or night,
- 9 (Because) a gag continually filling my mouth
- 10 Has kept food distant from my mouth and
- 11 Has diminished the water which passes through my drinking organ,
- 12 (Because) my song of joy has become wailing and my rejoicing mourning—
- 13 Stand by me, O great gods, and give heed to my suit,
- 14 Judge my case and grant me an (oracular) decision!
- 15 I have made a figurine of my warlock and witch,
- 16 Of my sorcerer and the woman who instigates sorcery against me,
- 17 I set (it) at your feet and am now pleading my case:
- 18 Because she has performed evil against me and has constantly conjured up baseless charges against me,
- 19 May she die, but I live.
- 20 May her witchcraft, her spittle, her enchantment be released.
- 21 May the tamarisk that is copious of crown clear me,
- 22 May the date palm that withstands all winds release me,

6 For the analysis of these two incantations, see T. Abusch, *Babylonian Witchcraft Literature: Case Studies* (BJS 132; Atlanta: Scholars Press, 1987), x–xii and 85–147. Much of the argumentation presented here is already found in that study.

- 23 May the soapwort that fills the earth cleanse me,
- 24 May the cone that is full of seeds release me.
- 25 In your presence I have (now) become pure like grass,
- 26 Clean and innocent like nard.
- 27 Her spell being that of an evil witch,
- 28 Her word has been turned back into her mouth and her tongue constricted.
- 29 On a(c)count of her witchcraft, may the Gods of the Night strike her,
- 30 May the three Watches of the Night release her evil spell.
- 31 Her mouth be tallow, her tongue be salt:
- 32 May that⁷ which uttered evil against me drip ever away like tallow,
- 33 May that⁸ which performed witchcraft against me dissolve like salt.
- 34 Her bonds are broken, her deeds nullified;
- 35 All of her words fill the steppe—
- 36 By the command pronounced by the Gods of the Night.

As stated previously, an earlier version of the ceremony would have been performed in the daytime and would have begun with what is now the sixth incantation (I 73–121), which was originally addressed to Shamash. After the ceremony was transferred to the nighttime, the present introductory section, I 1–72, was added. In line with its new ceremonial context, this section now opens with the address to the gods of the night, that is, the heavenly bodies that were part of the court of Anu, the god of heaven. This opening incantation is an indictment of the witches. The incantation draws together magical and legal imagery for this purpose. It should be emphasized that this incantation is not a simple prayer in which a stable negative situation is described and a change asked for. Rather, it is a speech that accompanies a ritual act and gives expression to a dynamic situation. The text thus reflects the changes in state undergone by the patient and the witches during the recitation of the incantation.

The incantation is in the form of a speech in the first person made by the patient, who invokes the heavenly gods of Anu (ll. 1–3). He first presents his plaint in the form of a description of the acts that the witch performed against him and of his resultant state (ll. 4–12). These facts clearly establish that he has suffered injuries at the hand of the witch and therefore that he has a right to a court hearing. Consequently, he asks the gods to take up his case (ll. 13–14).

7 That is, the witch's mouth.

8 That is, the witch's tongue.

He states that he has caused the accused witches to be present in the judgment in the form of figurines (ll. 15–17) and asks that they be punished because they have sought (perhaps by means of accusations) unmotivated evil against him, and that their bewitchment be released (ll. 18–20). He asks to be cleared (of bewitchment and any guilt imputed to him) by means of a standard set of plants—these plants usually serve to purify, but here they function as (an oath and) a form of juridical ordeal (ll. 21–24). Having proved his innocence and having been cleared (ll. 25–26), he rightfully asserts that since the witch's utterance belongs to an evil witch, her accusation has been refuted (ll. 27–28). He is now able to request that the Gods of the Night bring the witch to justice and indict her and that the Night Watches release the witchcraft (ll. 29–30). By means of a magical identification and act, the patient expresses the wish that the organs of speech of the witch be destroyed (ll. 31–33). Finally, he asserts that the witch's actions and accusations have been wholly nullified (ll. 34–35) by the Gods of the Night (l. 36).

Before going any further, I should address an objection raised against one part of my interpretation of this incantation by the late Raymond Westbrook. Westbrook's objection in his "Witchcraft and the Law in the Ancient Near East,"⁹ is, in my opinion, rather narrow in its focus and does not take account fully of the grammatical and other features of the text. In his judgment, "the victim opens his case with the claim, formulated in parallelism, that the person who has caused him harm has done so by witchcraft and deceit." He claims that my interpretation of lines 4–12 as a description of the witch's activities but not as an accusation is wrong, and that these lines are the legal claim and that lines 18–19 are the remedy. Line 19 surely is a remedy, to use Westbrook's terminology, but line 18 must be the accusation, "Because she has performed evil against me and has constantly conjured up baseless charges against me." My analysis is based on structure and vocabulary, and I will not rehearse it here in any detail. Suffice to say that the text has two claims, each introduced by *aššu*, "because" (lines 4 and 18): the first claim in lines 4–12 seeks to justify the request for a hearing in lines 13–14 and is not an accusation (hence the absence of *lemēnu*, "to do evil," in lines 4–12), while the second claim in line 18 justifies the penalty of death requested in line 19.¹⁰

9 The article is reprinted in R. Westbrook, *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook* (ed. B. Wells and F. R. Magdalene; 2 vols.; Winona Lake, Ind.: Eisenbrauns, 2009), 1:289–300. For Westbrook's objection see 291–92 there.

10 I do not mean to be dogmatic. I am aware of S. E. Holtz's observation on this text, in "Praying as a Plaintiff," *VT* 61 (2011): 271 n. 39, and I would be willing to reconsider my interpretation of the text, were a better explanation forthcoming as to why the text has

In this context, I should also explain my use in the past of the term “neutral” regarding the witch’s behavior here, a usage that may have been misunderstood because the witch and her actions are usually (but not always) considered to be evil in Mesopotamian anti-witchcraft rituals. I argued that in lines 4–12 the plaintiff’s description of the witch “has no legal force beyond that of setting out the grounds for the . . . request” that the divine court convene and hear the case.¹¹ Here, the witch’s actions are not necessarily evil and only become criminal when the victim proves both his own innocence of any accusation made against him by the witch and the evil intent of her actions. Only then does the plaintiff prove that the witch has committed a crime.¹²

In my earlier analysis of this incantation, I noticed that “the author of our incantation used *kaššāptu* and *kuššupu* as legally and morally (though probably not emotionally) neutral terms.”¹³ Of course, the witch’s actions are harmful, but, as such, being harmful does not constitute a crime. To be sure, the witch is treated as an evildoer in most of our anti-witchcraft rituals. But by using the term “neutral,” I was making two claims, one somewhat general and the other quite specific: 1) In Mesopotamia, witchcraft was not always anti-social and might occasionally be supportive of the patient.¹⁴ 2) I 4–12 do not constitute a legally binding accusation.

two claims, each introduced by *aššu*, “because,” and why *lemēnu*, “to do evil,” is present in line 18 and absent in lines 4–12.

11 Abusch, *Babylonian Witchcraft Literature*, 131.

12 I thus disagree with D. Schwemer, “Empowering the Patient: The Opening Section of the Ritual *Maqlû*,” in *Pax Hethitica: Studies on the Hittites and Their Neighbours in Honour of Itamar Singer* (ed. Y. Cohen, A. Gilan, and J. L. Miller; SBT 51; Wiesbaden: Harrassowitz, 2010), 317 n. 23. I should note, however, that I agree overall with his comments about I 1–36 there, except perhaps for his claim that this incantation reflects the basic dynamic of *Maqlû* as a whole (I am not sure that it reflects the morning part of the ritual). But I do concur with his remark that “the accompanying actions” of the incantation and, by implication, the incantation itself, “represent a self-contained anti-witchcraft ritual” (318). This certainly agrees with my idea that this incantation may have existed independently in some form, that it was added to the series, and that I 73–121 was not originally dependent on it.

13 Abusch, *Babylonian Witchcraft Literature*, 133.

14 In addition to my interpretation of I 1–36, see my explication of VII 80–100 in “The Demonic Image of the Witch in Standard Babylonian Literature: The Reworking of Popular Conceptions by Learned Exorcists,” in *Religion, Science, and Magic in Concert and in Conflict* (ed. J. Neusner, E. S. Frerichs, and P. V. M. Flesher; New York: Oxford University Press, 1989), 32–34 = *Mesopotamian Witchcraft*, 8–10; “Ritual and Incantation: Interpretation and Textual History: A Consideration of *Maqlû* VII: 58–105 and IX: 152–59,” in *‘Sha’arei Talmon: Studies in the Bible, Qumran, and the Ancient Near East Presented to*

We should recall that in some societies witchcraft is morally neutral. The fact that witchcraft may sometimes be neutral is supported by comparative material, for it has been recognized in the anthropological literature that “the term ‘witch’ does not invariably have a sinister or evil connotation. There are and were societies in which she was believed on occasion to cure ailments as well as attack people, their interests or their property,” and that sometimes “terms that might conceivably be translated as ‘witchcraft’ signify in fact a morally neutral power, believed to be used sometimes legitimately for protecting the community and effecting social control; and sometimes illicitly for harming other people.”¹⁵ Thus, I find objections to my use of the term “neutral” to be unjustified. As indicated above, I still maintain that lines 4–12 are a description of the witch’s activities but not an actual accusation as such.

I treat this first incantation as a preliminary hearing, which originally might have represented a stand-alone hearing. For while the incantation in its present form possesses literary unity, it seems nevertheless possible to discern two literary strata and to suggest that the composer of our incantation took an existing, but much shorter, incantation as the basis for his composition. This suggestion is based on lines 19–20:

May she die, but I live.

May her witchcraft, her spittle, her enchantment be released.

The position of lines 19–20 in the very heart of the incantation constitutes a structural anomaly, since elsewhere in the witchcraft corpus lines identical with or similar to lines 19 and/or 20 are usually found at or near the end of their respective incantations.

Since lines 19–20 are completely unexpected in the middle of the incantation and since the section containing the innovations begins in line 21, it is likely that the author responsible for the final version of our incantation took

Shemaryahu Talmon (ed. M. Fishbane and E. Tov; Winona Lake, Ind.: Eisenbrauns, 1991), 370–75 = *Mesopotamian Witchcraft*, 187–91; and “Witchcraft, Impotence, and Indigestion,” in *Disease and Medicine in Ancient Mesopotamia* (ed. I. L. Finkel and M. J. Geller; Cuneiform Monographs 36; Leiden: Brill, 2007), 153–58 = *Mesopotamian Witchcraft*, 84–87.

15 M. Marwick, “Introduction,” in *Witchcraft and Sorcery* (2d rev. ed.; ed. M. Marwick; London: Penguin, 1982), 13. It is also noted there that E. E. Evans-Pritchard’s influential finding that “the Zande word *mangu* denotes an exclusively anti-social power—and should therefore be translated as ‘witchcraft,’” is challenged by A. Harwood’s reexamination of the Azande materials. Harwood points out that the finding that witches and sorcerers are by definition anti-social and immoral “derives from Evans-Pritchard’s having espoused the perspective of the witch-doctor rather than that of the ordinary villager” (13).

over an already existing traditional incantation more or less identical with lines 1–20 and only composed lines 21ff. Thus, an earlier, pre-*Maqlû*, form of this incantation ended with line 20, and lines 21–36 represent an innovation and are an addition.

This development (1–20 > 1–36) had as its purpose the transformation of an independent incantation into one which would serve as the introduction to a sequence of incantations and which would find its fulfillment not in itself, but in a later part of the sequence; for while the original incantation (1–20) serves to kill the witch, the incantation constructed from it (1–36) only serves to indict, incarcerate, and physically disable her. *Maqlû* I 1–36 constitutes the first stages in the trial of the witch, the final stages of which are to be found in the address to Nuska in I 73ff.

Seen from this perspective, the function of the hearing before the court of the gods of the night is as follows: The plaintiff describes the witch's behavior and establishes thereby his right to an investigation. The court undertakes this investigation and requires the submission of evidence so that it may determine (a) whether the effects of the magic on the plaintiff should be eliminated and the plaintiff cleared of the accusation leveled against him by the witch, and (b) whether the witch should be indicted and bound over and the case assigned to the court of the fire god. The evidence submitted by the plaintiff is an oath or ordeal and takes the form of a purification ceremony whereby the plaintiff establishes his innocence of charges leveled against him by the witch.¹⁶ The court accepts this evidence as demonstrating the existence of a case and as constituting grounds (a) for releasing the magic's effects on the plaintiff and clearing him of the accusation (34–35), and (b) for indicting the witch on a count of having practiced *kišpû* (29) and binding her over for trial before Nuska.

In Mesopotamia the adjudication of a case may involve a judicial procedure composed of multiple stages.¹⁷ Instances are known of criminal charges being brought initially not to the court which will impose the final verdict, but to an authority whose function is to examine the charges and their factual

16 Cf. B. Ankarloo, "Witch Trials in Northern Europe 1450–1700," in *Witchcraft and Magic in Europe: The Period of the Witch Trials* (ed. B. Ankarloo and S. Clark; Philadelphia: University of Pennsylvania Press, 2002), 62: "If the suspect [accused of performing witchcraft or, perhaps better, maleficium] could persuade eleven villagers to join him or her in an oath of purification s/he might be acquitted."

17 For example, see F. R. Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job* (BJS 348; Providence, R.I.: Brown Judaic Studies, 2007), 65–94, for the Neo-Babylonian period.

foundations and to assign those cases judged to be sufficient to a suitable court for trial and execution. In *Maqlû* the gods of the night function as the investigating court to which the charges are first brought. These gods investigate these charges and deem them sufficient for allowing the court to rectify certain abuses committed against the plaintiff by the witch and to assign the witch to the court of Nuska for trial and execution.

This brings us to I 73–121, the main hearing. The text reads:

- 73 Incantation. O Nuska, these are the figurines of my sorcerer,
- 74 These are the figurines of my sorceress,
- 75 The figurines of my warlock and my witch,
- 76 The figurines of my sorcerer and the woman who instigates sorcery against me,
- 77 The figurines of my enchanter and my enchantress,
- 78 The figurines of my male and female inseminators,
- 79 The figurines of the male and female who are enraged at me,
- 80 The figurines of my male and female enemies,
- 81 The figurines of my male and female persecutors,
- 82 The figurines of my male and female litigants,
- 83 The figurines of my male and female accusers,
- 84 The figurines of my male and female adversaries,
- 85 The figurines of my male and female slanderers,
- 86 The figurines of my male and female evildoers,
- 87 Whom, you, Nuska, the judge, know, but I do not know,
- 88 Who witchcraft, spittle, enchainment, evil machinations,
- 89 Sorcery, rebellion, evil word, love (-magic), hate (-magic),
- 90 Perversion of justice, *Zikurrudâ*-magic, aphasia, pacification,
- 91 Mood swings, vertigo, and madness
- 92 Against me have performed, have had performed, have sought, have had sought.
- 93 These are they, these are their figurines.
- 94 Since they are not present, I bear aloft their figurines (and say):
- 95 You, Nuska, the judge, vanquisher of the wicked and the enemy, vanquish them so I shall not be wronged,
- 96 (Those) who have made my figurines, reproduced my facial features,
- 97 Seized my mouth, made my neck tremble,
- 98 Pressed on my chest, bent my spine,
- 99 Weakened my heart, taken away my sexual drive,
- 100 Made me turn my anger against myself, sapped my strength,
- 101 Caused my arms to fall limp, bound my knees,

102 Filled me with fever, stiffness, and debility,
 103 Fed me bewitched food,
 104 Given me bewitched water to drink,
 105 Bathed me in dirty wash water,
 106 Rubbed me with a salve of harmful herbs,
 107 Betrothed me to a dead man,
 108 Laid the water of my life in a grave,
 109 Caused god, king, noble, and prince to be angry with me.
 110 O you, Girra, it is you who are the burner of warlocks and witches,
 111 The annihilator of the wicked, seed of warlock and witch,
 112 The destroyer of the evildoers.
 113 I call upon you in the stead of Shamash, the judge.
 114 Judge my case, render my verdict.
 115 Burn my warlock and my witch,
 116 Devour my enemies, consume my oppressors!
 117 Let your raging (fire-)storm vanquish them.
 118 May they come to an end in a trickle like water from a waterskin.
 119 May their fingers be cut back like smashing stones.
 120 By your pre-eminent command that cannot be altered
 121 And your affirmative assent that cannot be changed.

As I mentioned earlier, this incantation was originally recited in the morning and was addressed to Shamash, the sun god and judge par excellence. But with the transfer of the ritual to the night, it was readdressed to Nuska, the god of the protective lamp. In its present form, the incantation may be summarized as follows. Raising up statues to Nuska, the plaintiff identifies the statues that he holds as representations of witches who have performed acts of witchcraft against him and have harmed him unjustly. He then appeals to Nuska to find and overwhelm these evildoers and to safeguard the rights of the petitioner. The god is asked to pronounce a sentence of death by fire, and the fire god Girra is asked to execute the sentence. Girra here originally functioned as Shamash's arm; he was the hypostatization of the destructive heat rays of the sun. The statues are then bound and placed in the brazier.

The defendant is brought before the court of Nuska in the form of a statue. This is not simply an act of sympathetic magic, for judgment in absentia and the use of images of the witch are enjoined on the victim also because of his ignorance of the identity of the culprit. Such ignorance is not surprising, since the alleged criminal is a witch. Because of his ignorance, the plaintiff can therefore not prosecute the evildoer in a regular court of law; instead he appeals to Nuska, who knows the actual identity of the witch, to decree the witch's destruction by fire.

To fully understand the legal procedure operative in the first tablet of *Maqlû* we must examine even more closely the address to Nuska in I 73–121. As I have said several times, this incantation was originally addressed to Shamash and was re-addressed to Nuska when the text was adapted for nighttime use. In this type of incantation, Shamash is addressed and functions in his capacity of judge, and Nuska, as his replacement, carries on this function. However, it would be a mistake to infer from Shamash/Nuska's role as judge in 73–121 and from the law court setting of this incantation that the submission and examination of evidence substantiating the charge against the witch and the determination of her innocence or guilt are part of the proceedings in the court of the god in this incantation. In texts belonging to the same genre as *Maqlû* I 73–121,¹⁸ the core of the speaker's address to Shamash is represented by the simple, though often long, statement by the accuser that he is presenting before the god statues of the witches who have performed witchcraft against him and by his request that the judge pronounce a verdict of death by fire and that the fire god execute the verdict.

In this regard, there is no essential difference between the address to Nuska in *Maqlû* I 73–121 and the aforementioned addresses to Shamash. Here the accuser identifies the (statues of the) defendants as the ones who have committed acts of witchcraft against him (73–109) and demands that the court of the fire god order and execute a death penalty by fire (110–21). Nowhere in this incantation does the plaintiff attempt to substantiate the claim that the accused did, in fact, perform witchcraft against him, and nowhere is the court asked to determine the innocence or guilt of the accused. The accuser treats the guilt of the witch as a foregone conclusion and demands of the court that it impose the death penalty on her. To all intents and purposes, the accuser himself pronounces the death verdict on the witch. The accuser does not fear lest the court of Nuska declare the witch innocent, does not attempt to prove to the court that she is guilty as charged, and feels secure that the court will accede to his demand. The accuser's behavior assumes the court's knowledge of the witch's guilt and the accuser's belief that the court will act in accordance with that knowledge.

Although evidence was previously submitted to the court of the gods of the night in lines 1–36 proving, or, at least, establishing the presumption, that the defendant had practiced witchcraft, this cannot account for the fact that in lines 73–121 the facts of the case and the guilt of the witch are taken for granted. The attitude displayed by the speaker in I 73–121 and the legal procedure

18 For examples, see T. Abusch and D. Schwemer, *Corpus of Mesopotamian Anti-witchcraft Rituals* (Ancient Magic and Divination 8/1; Leiden: Brill, 2011), 1:270–305 (Nos. 8.3 and 8.4).

operative in this incantation must have already been present in the original version of the incantation prior to its association with I 1–36 and cannot be explained as a modification introduced into the Nuska incantation as a result of this subsequent association.

Accordingly, we cannot look to the present context of I 73–121 for an explanation of the lack of substantiation of the charges and of the assumption of the witch's guilt and must seek that explanation in some datum of the Mesopotamian criminal legal tradition. That explanation is forthcoming if we treat the legal procedure operative in I 73–121 and in similar incantations as representing a stage of development in that tradition of criminal procedure discussed by the late Thorkild Jacobsen in his analysis of the Nippur homicide trial and the situation underlying the tradition of criminal procedure:

... the record of a trial for homicide ... is the record of the formulation of a verdict only. ... [T]his complete absence of a detailed establishing of the facts of the case through testimony of witnesses, confession, oath, or otherwise is most striking. Even if one would assume ... that a thorough establishing of the facts had already taken place before the king, before the case reached the assembly for trial, the lack of even the briefest presentation of those earlier findings leads again to the conclusion that the assembly was expected to reach its verdict on the basis of its members' personal knowledge and convictions rather than on facts established in court. ... [We are] dealing with a separate and altogether distinct, criminal procedural tradition. ...

Rather different [than the situation underlying civil procedure] appears the original situation underlying the tradition of criminal procedure. The early "crime" is an act endangering the whole community, and the community, aroused and scared, is apt to deal with it along lines of lynch-justice. In the emotionally highly charged lynch situation the facts and the guilt of the accused are generally taken for granted. ... At the tense moment when the community faces the accused the salient point is therefore merely the crystallization of the guilt in a precise and poignant formula that will trigger the punitive mass action. This formula fulfills the function of the later "verdict."¹⁹

19 T. Jacobsen, "An Ancient Mesopotamian Trial for Homicide," in *Studia biblica et orientalia* (AnBib 12; Rome: Istituto Biblica Pontificio, 1959), 141–42 = *Toward the Image of Tammuz and Other Essays on Mesopotamian History and Culture* (ed. W. L. Moran; HSS 21; Cambridge, Mass.: Harvard University Press, 1970), 204–5.

The legal procedure operative in *Maqlû* I 73–121 stands in the same procedural tradition as the Nippur trial, and it is for this reason that the accuser is able to take the court's knowledge of the witch's guilt for granted and to base the demand that the god kill the witch simply on his own assertion that she bewitched him.

• • •

With this, we may conclude the examination of the divine courtroom in *Maqlû*. Yet in the proceedings of a conference on the divine court, sponsored by the Yeshiva University Center for Jewish Law and Contemporary Civilization at Benjamin N. Cardozo School of Law, I feel it is more than appropriate to add one final observation about divine judgment an observation originally precipitated by the request of the litigant in the prayer to the gods of the night at the beginning of *Maqlû*. There the litigant asked the gods to render a decision between him and his oppressor, the witch, with the words: *dīnī dīnā alakti limdā*, "Judge my case and grant me an (oracular) decision!" I imagine that the gods of the night gave the judgment asked of them in the form of an oracle, probably an astral sign referred to by the word *alaktu*.

Starting from this passage, several decades ago I argued that in some contexts *alaktu* is not simply "path," but rather "astral course, oracle."²⁰ *Alaktu* is

20 See my "*Alaktu* and *Halakhah*." I should reiterate that among the points made in my study about Akkadian *alaktu* were: 1) *alaktu* did not necessarily refer to a past situation, but rather referred to the future; in so doing I was struggling against standard translations that situated *alaktu* in the past (for examples, see Abusch, "*Alaktu* and *Halakhah*," 16–17 n. 5); 2) *alaktu* is an oracular term and might refer to an oracle obtained by divination; 3) given the usage of *alakta lamādu* in parallelism with *dīna dānu* and *purussā parāsu*, *alaktu* could refer to a divine decision. I should also note that I took account of the literal meaning of *alaktu*, and therefore argued that it referred to an astral "course" from which one might infer the person's future. Although my collaborator, D. Schwemer, "Fighting Witchcraft before the Moon and Sun: A Therapeutic Ritual from Neo-Babylonian Sippar," *Or* 79 (2011): 492–98, uses different translation values for *alaktu* and seeks to maintain "an interpretation that stays closer to the basic meaning" (i.e., to a more literal meaning) of the word (494), he agrees with much of the new meaning that I have advanced for *alaktu* and has incorporated much of my understanding of *alaktu* into his interpretation, albeit in parentheses (e.g., "If a man . . . but his (future) condition (determined by divination) . . ." [495 and again on 496]). Although Schwemer's "condition" might sometimes be an appropriate translation for *alaktu*, some passages set this word in divinatory contexts and thus require, in my view, a translation of *alaktu* that connotes some form of oracular manifestation rather than simply "condition" (cf., e.g., F. Köcher, *Die babylonisch-assyrische Medizin in Texten und Untersuchungen* [Berlin: de Gruyter, 1963–], No. 316

thus also an astrological term and refers to the manifestation, movement, or configuration of heavenly bodies. In this sense, *alaktu* refers not only to the ominous course itself but also to the divine rulings revealed by means of signs; it is an oracle made manifest by movements of the night heaven. The use of *alaktu* as an astrological term for celestial movements explains how “course” came to mean “divine decision.” Heavenly courses represent the cosmic will and provide humans with the ruling of the gods.

In that same study I then argued that Jewish *halakha/hilkhētā* in the meaning “law” is a calque derived from this usage of *alaktu* in Akkadian. The source of *halakha* is in the heavens and not in the “going” or customary behavior of humans. *Halakha*, “law,” owes its meaning to the development: courses of the stars → divine oracle → path of action. In the context of this volume, then, I would reiterate those earlier arguments as well as my continued belief in their correctness.

ii 12'–16', where we find the parallelism of *purussû || dīnu || šunātu || alaktu || ubān damiqti*). I note further that Schwemer translates *alaktašu* as the patient's “condition,” yet still presumes the existence of an act of divination. He agrees with me that we are dealing with divination, but I do not see where he is finding the divination if it is not in *alaktu*, especially in cases where the immediate text lacks another word that can account for it (e.g., *alaktašu marṣat*). Thus, contrary to the more complicated interpretation that Schwemer gives to *alaktašu lā parsat* (497–98), I would maintain my original interpretation of that phrase (Abusch, “*Alaktu* and *Halakhah*,” 29–30).

The Divine Courtroom Scenes of Daniel 7 and the Qumran *Book of Giants*: A Textual and Contextual Comparison

Joseph L. Angel*

1 Introduction

Due to its inclusion in the Hebrew Bible as well as its profound influence on Christian tradition, Daniel 7 represents the best known portrayal of the divine courtroom from Second Temple Judaism. In this Aramaic passage, the apocalyptic visionary Daniel recounts his dream of four terrifying creatures emerging from the mythical “great sea.” Later in the chapter, the interpreting angel explains that these monsters represent a succession of four world empires that have been given dominion over the earth. The prose description of the four monsters (vv. 2–8) is followed by the climax of the vision, a poetic account of the divine courtroom (vv. 9–10):¹

⁹As I looked on,
Thrones were set in place,
And the Ancient of Days sat down.
His garment was like white snow,
And the hair of his head was like lamb’s wool.
His throne was tongues of flame;
Its wheels were blazing fire.
¹⁰ A river of fire streamed forth before him;
Thousands upon thousands served him;
Ten thousand times ten thousand were standing before him;
The court sat and the books were opened.

* Assistant Professor of Bible, Yeshiva University. I wish to thank Angela Kim Harkins and Aaron Koller for reading an earlier draft of this paper. This paper was prepared prior to the publication of J. Trotter, “The Tradition of the Throne Vision in the Second Temple Period: Daniel 7:9–10, 1 Enoch 14:18–23, and the *Book of Giants* (4Q530),” *RevQ* 99 (2012): 451–66, which offers an important alternative perspective to many of the issues discussed here.

1 Translations of the Hebrew Bible are drawn from NJPS with several of my own adaptations.

This impressive scene is immediately followed by an account of the judgment of the fourth and most terrifying beast, who is killed and tossed to the flames (no trial is mentioned). Eternal dominion over the earth is then transferred to a mysterious figure who rides in with the clouds of heaven, the “one like a human being”² who represents “the people of the holy ones of the Most High” (v. 27). Since the fourth beast is to be identified with the Macedonian Seleucid Empire and its blaspheming “horn” with Antiochus IV (175–164 BCE), and the people of the holy ones with the Jewish people, the chapter, at least in its present form, is commonly dated to the period of the Antiochan crisis (167–164 BCE).³ The text’s portrayal of the divine courtroom would then serve as a powerful reassurance to the oppressed Jews of this period that their suffering was far from random or meaningless—rather it was part of a larger cosmic scheme. More importantly, it affirmed that this struggle was destined to end with the judgment of the wicked Seleucids and the vindication of God’s elect.

A lesser known, but strikingly similar description of the divine courtroom appears in the roughly contemporary Qumran *Book of Giants*, at least nine (and perhaps as many as eleven) ancient manuscripts of which were discovered in four different caves near the shores of the Dead Sea several decades ago.⁴ The story of the identification of these Aramaic manuscripts is an intriguing topic

2 This translation is preferable to the common “one like a son of man,” as it more accurately reflects the meaning of the Aramaic כְּבֶר אִנָּשׁ.

3 Some date the text even more precisely to the period in between the Antiochan decree and the desecration of the temple in late 167 BCE. See, e.g., J. J. Collins, *Daniel: A Commentary on the Book of Daniel* (Hermeneia; Minneapolis: Fortress Press, 1993), 324. To be sure, there is no consensus on the unity of the chapter, and many scholars see evidence of a complex redactional process, according to which Daniel 7 represents an accretion of traditions of varying antiquity. It is commonly asserted, for example, that vv. 9–10 derive from an older source. See, e.g., J. A. Montgomery, *A Critical and Exegetical Commentary on the Book of Daniel* (Edinburgh: T&T Clark, 1927), 296; N. W. Porteous, *Daniel: A Commentary* (Philadelphia: Westminster Press, 1965), 93.

4 The following nine manuscripts have been positively identified as copies of the *Book of Giants*: 1Q23, 2Q26, 6Q8, 4Q203, 4Q206 2–3 (=4Q206a), 4Q530, 4Q531, 4Q532, and 4Q533. Two others, 1Q24 and 6Q14, may be related, but their identification remains uncertain. The earliest of the manuscripts, 4Q530, has been dated on paleographical grounds to 100–50 BCE by J. T. Milik (*The Books of Enoch: Aramaic Fragments of Qumran Cave 4* [Oxford: Clarendon Press, 1976], 57) and to around 100 BCE by É. Puech (*Qumran Grotte 4.XXII: Textes araméens, première partie* [4Q529–549] [DJD 31; Oxford: Clarendon Press, 2001], 12). Since the composition may depend on the Enochic *Book of the Watchers* (1 En. 1–36), which may be placed with relative certainty in the third century BCE at the latest, a date in the second century BCE might be proposed. L. T. Stuckenbruck (*The Book of Giants from Qumran* [TSAJ 63; Tübingen: Mohr Siebeck, 1997], 31–40) contends that the particular Jewish-Hellenistic

in its own right, and I shall not rehearse it again here.⁵ It will suffice for my present purpose to observe that the composition preserved in these Qumran fragments was identified by J. T. Milik in the 1970s as a previously unknown Jewish work that served as the inspiration for the canonical *Book of Giants* long known to have circulated among the Manichaeans (and attributed to Mani himself) that was partially reconstructed for the first time by W. B. Henning in 1946.⁶ Milik noted further that the ancient Jewish composition was closely linked to the vast body of Second Temple period lore that developed around the antediluvian biblical patriarch Enoch, represented especially by the book of *1 Enoch*. As in *1 Enoch*, in this composition Enoch is portrayed as mediating between God and disobedient divine beings, and it may be the case that one of the manuscripts of this work (4Q204) was copied together as part of a copy of *1 Enoch* (4Q203).⁷ Milik thus dubbed the text the Enochic *Book of Giants* and even suggested that it was part of an original Enochic pentateuchal collection. While the latter suggestion has not found acceptance in the field, there is no question of the book's compatibility with Enochic tradition. But even with the large number of manuscripts, the composition remains frustratingly incomplete. Fortunately, both the Manichaean evidence and the well-known Enochic mythological background appearing in *1 Enoch* and other works have aided scholars greatly in their quest to grasp the original structure, content, and meaning of the book (which I will refer to henceforth as *BG*).

cultural backdrop of the text implies a date in the early second century BCE. See further his discussion on pp. 28–31.

- 5 For a detailed account, see J. C. Reeves, *Jewish Lore and Manichaean Cosmogony: Studies in the Book of Giants Traditions* (Monographs of the Hebrew Union College 14; Cincinnati: Hebrew Union College Press, 1992), esp. 28–32.
- 6 Prior to the twentieth century, the Manichaean *Book of Giants* was known only in name from Manichaean canon lists, as well as from hostile Christian and Islamic heresiological literature. Milik's identification was made possible by Henning's publication of a partial reconstruction of the Manichaean *Book of Giants* based on remnants of manuscripts in various Middle Iranian languages preserved among the fragments from Turfan in Chinese Turkestan. See W. B. Henning, "The Book of Giants," *BSOAS* 11 (1943–1946): 52–74.
- 7 If Milik's suggestion that 4Q203–4Q204 belong to the same manuscript is correct, then the *Book of Giants* was copied together with parts of the *Book of the Watchers*, the *Book of Dreams*, and the *Epistle of Enoch* as early as the late first century BCE. See Milik, *Books of Enoch*, 310 and 178–79. His contention remains unverifiable. At the very least 4Q203 and 4Q204 appear to have been copied by the same scribe. Cf. J. C. Greenfield and M. E. Stone, "The Enochic Pentateuch and the Date of the Similitudes," *HTR* 70 (1977): 54; L. T. Stuckenbruck in S. J. Pfann et al., *Qumran Cave 4.XXVI: Cryptic Texts and Miscellanea, Part 1* (DJD 36; Oxford: Clarendon Press, 2000), 8–10.

Before turning to *BG*'s account of the divine courtroom, it will be worthwhile to offer a brief description of the contents of the work. Much like the Enochic *Book of the Watchers* (*1 En.* 1–36; see esp. chapters 6–16), *BG* is an expansion and embellishment of Gen 6:1–4, the mysterious passage in which the “sons of God” (בני האלהים) cohabit with “the daughters of men” (בנות האדם) producing “the famous heroes of old, the men of renown” (גבורים אשר מעולם) (אנשי השם). According to Enochic tradition the origins of evil in the world may be traced back to this primordial tale. The “sons of God” are the angels (known as “the watchers”) who descended from heaven during the generation of Jared, the father of Enoch. Their unnatural union with human women produced the giants, a hybrid race of freakish strength and size that proceeded to terrorize humanity. The great flood of the generation of Noah is God’s response to the wickedness perpetrated by the giants against humanity. (Contrast the biblical account, where the flood represents punishment for the sins of humanity.) *BG* is unique among Enochic writings in that the story is told specifically from the perspective of the giants, who, as in the Manichaean sources, are given personal names such as Ohyah, Hahyah, Mahaway, and, most fascinatingly, Gilgamesh and Hobabish.⁸ The text elaborates upon the murderous and destructive crimes of the giants and centers on how their impending judgment by God is revealed to them through dream-visions that are interpreted by Enoch, “the interpreting scribe” (ספר פרשא).⁹

The following comparison of the divine courtroom scenes of Dan 7:9–10 and *BG* proceeds in two parts. First, the tradition-historical relationship of the texts is considered. Scholars agree that these two passages exhibit a tradition-historical relationship, but there is presently no consensus with regard to the precise nature of the relationship. Second, the study reflects on how Daniel and *BG* deploy the same traditional image of the divine courtroom in the service of two very different apocalyptic orientations. For example, in Daniel the appearance of the court is tied to the judgment of the historical Seleucid Empire and the eschatological salvation for the Jewish people. In *BG*, however, it is linked to primordial times and announces the judgment of the giants, the mythological offspring of heavenly angels and human women who filled the earth with violence and corruption. The study concludes with a brief consideration of the

8 These last two names are connected to the *Epic of Gilgamesh* and bespeak familiarity with Babylonian traditions. On the basis of evidence from the Manichaean *Book of Giants* (*Kawān*), J. C. Reeves argues that a giant named Utnapishtim was mentioned in the original Aramaic composition as well (“Utnapishtim in the Book of Giants?” *JBL* 112 [1993]: 110–15).

9 On the meaning of the phrase ספר פרשא, see Stuckenbruck, *Book of Giants*, 117–19.

social matrix that engendered the appearance of the same tradition in such different apocalyptic contexts.

2 Textual Comparison

The passage of interest for comparison with Daniel 7 appears in the dream-vision of the giant named Ohyah in 4Q530 2 ii 16–20:¹⁰

Ohyah's dream-vision

Daniel 7:9–10

ה[א שלטן שמיא לארעא נחת וכרסון יחיטו וקדישא רבא ית]ב	חזה הוית עד די כרסון רמיו ועתיק יומין יתב
	לבושה כתלג חור ושער ראשה כעמר נקא כרסיה שבבין די נור גלגלוהי נור דלק נהר די נור נגד ונפק מן קדמוהי
מאה מ[אין לה משמשי אלף אלפין לה] כ[ל]ק[דמוהי יקומון	אלף אלפים (אלפין) ישמשונה ורבו רבון (רבבן) קדמוהי יקומון
וארון ספר[ין פתיחו ודין אמיר ודין [בכתב כ]תיב וברשם רשים]לכל חיא בשרא ועל]שין [...] עד כא סוף חלמא	דינא יתב וספרין פתיחו [...] עד כה סופא די מלתא (7:27)

Be]hold,
The ruler of the heavens came down
to the earth,
And thrones were erected

As I looked on,

Thrones were set in place,

¹⁰ See the edition of Puech, DJD 31, 9–115.

And the Great Holy One sat d[own].

And the Ancient of Days sat down.
His garment was like white snow,
And the hair of His head was like
lamb's wool. His throne was tongues
of flame;
Its wheels were blazing fire.
A river of fire streamed forth before
Him;

A hundred hu]ndreds were serving
Him,
A thousand thousands [(were) . . .]
Him. [A]ll were standing [b]efore
Him.

Thousands upon thousands were
serving Him;
Ten thousand times ten thousand
were standing before Him;

And behold, [book]s were opened,
And judgment was proclaimed.
And the judgment [. . . in a book]
was [wri]tten and recorded in an
inscription [. . .] for all the living and
the flesh and upon [. . .]
Here is the end of the dream.

The court sat and the books were
opened.
[. . .]
Here is the end of the account.
(Dan 7:27)

As Loren Stuckenbruck observes, these passages share numerous lexical items ("throne," "sit down," "serve," "thousand," "before," "stand," "book," "open"). Even more strikingly, seven of these terms appear in identical grammatical form, and there is a remarkably similar sequence of phraseology.¹¹ The order in which the following five phrases in *BG* appear matches the sequence of the parallel phrases in Dan 7:9–10: "thrones were erected," "he sat d[own]," "a thou-

11 L. Stuckenbruck, "The Throne-Theophany of the Book of Giants: Some New Light on the Background of Daniel 7," in *The Scrolls and the Scriptures: Qumran Fifty Years After* (2 vols.; ed. S. Porter and C. Evans; Sheffield: Sheffield Academic Press, 1997), 2:217–18. The identical forms include the following: "thrones" = כרסון, "he sat down" = יתב, "books" = ספרין, "they were opened" = פתחו, "before him" = קדמו, "they were standing" = יקומון, "thousand" = אלף, "thousands" = אלפין. One might add the phrase "until here" = עד כאן, but in Daniel it appears only after the interpretation of the vision is given, whereas in *BG* it appears immediately after the vision itself.

sand thousands,” “[a]ll were standing before him,” and “[book]s were opened.” The order of the words within the parallel phrases is similar as well. Such details have sufficed to convince scholars of the tradition-historical relationship of these two texts. The differences between them, however, are difficult to interpret and do not readily reveal the precise nature of the relationship. There has been a good deal of debate on this topic in recent years and many possible explanations could be imagined. Most simply, *BG* could be directly dependent on Daniel or vice versa. This option is closely linked to the question of compositional priority. For instance, largely based on his conviction that *BG* postdates Daniel, Milik concludes that the latter served as the source for the former.¹² Since *BG* could just as easily date before Daniel, other scholars have claimed that Daniel was directly influenced by *BG*.¹³ A more complex relationship, according to which both works depend on a common source, is also conceivable. According to this model, the relative dating of *BG* and Daniel cannot be considered decisive as it is possible that the later of the two works preserves a more faithful form of an older tradition. In other words, regardless of compositional priority, it is possible either that *BG* preserves an earlier form of the tradition utilized by Daniel,¹⁴ or that Daniel preserves an earlier form of the tradition utilized by *BG*.¹⁵ Another recent proposal views these passages as independently crafted iterations of a shared oral tradition.¹⁶

Naturally, the best explanation of the source-critical relationship will account for both similarities and differences. The major divergences between the passages may be divided into textual and contextual differences. The present section of this study will deal mostly with the textual differences, while the following section will center on the contextual ones.

2.1 *Textual Differences*

(1) In *BG*, the divine courtroom convenes on earth. God descends. In Daniel 7, the location is never mentioned. In verse 13, however, the “one like a human

12 Milik, *Books of Enoch*, 58. Cf. F. García Martínez, *Qumran and Apocalyptic: Studies on the Aramaic Texts from Qumran* (STDJ 9; Leiden: Brill, 1992), 115.

13 So H. Kvanvig, “Throne Visions and Monsters: The Encounter between Danielic and Enochic Traditions,” *ZAW* 117 (2005): 249–72; see esp. pp. 257–58.

14 Argued by Stuckenbruck, “Throne-Theophany”; idem, “Daniel and Early Enoch Traditions in the Dead Sea Scrolls,” in *The Book of Daniel: Composition and Reception* (2 vols.; ed. J. Collins and P. Flint; Leiden: Brill, 2001), 2:368–86; esp. 378–84.

15 Argued by R. Stokes, “The Throne Visions of Daniel 7, *1 Enoch* 14, and the Qumran *Book of Giants* (4Q530): An Analysis of Their Literary Relationship,” *DSD* 15 (2008): 340–58.

16 See Trotter, “Tradition of the Throne Vision,” 451–66.

being” approaches God “with the clouds of heaven,” so it may be inferred that the courtroom is in heaven.

(2) *BG* refers to God as the “Great Holy One,” while in Daniel he is called the “Ancient of Days.”

(3) Daniel describes the clothing and hair of the enthroned one, as well as the fiery appearance of the throne and its wheels (cf. Ezek 1; *1 En.* 14:18–23). *BG* has no corresponding account.

(4) The number of court attendants differs. In *BG* there appear to be hundreds and thousands,¹⁷ whereas in Daniel there are thousands and tens of thousands.

(5) *BG* has three cola describing the acts of these servants. Daniel has only two.

(6) In *BG* God alone sits on a throne of judgment while in Daniel other thrones are occupied by the “court.”

(7) Daniel refers to “one like a human being” (v. 13). It may be that this figure is to be envisioned as enthroned as well (as suggested by Rabbi Akiva: “one [throne] for God, one for David” [*b. Hag.* 14a; *Sanh.* 38b]). No such figure appears in *BG*.

(8) Both texts refer to the opening of books, which constitute the divine record of deeds that will serve as the basis for condemnation. But whereas Daniel contains no further details of the courtroom procedure, *BG* offers an expansive but fragmentary account of the recording of the judgment. The words “for all the living and the flesh and upon . . .” may refer to the punishment of the flood (cf. Gen 6:17: “I am about to bring the flood—waters upon the earth—to destroy all flesh under the sky in which there is breath of life; everything on earth shall perish.”).

2.2 Contextual Differences

(9) Who is judged? In *BG* it is the mythological hybrid giants. In Daniel the fourth beast is non-human and hybrid in form as well. But this beast has a clear historical referent, the Seleucid Empire and King Antiochus IV.

(10) In *BG*, the judgment of the giants has a universal impact—it is good for all of humanity. The judgment of the fourth beast in Daniel brings about the political autonomy and salvation of God’s elect alone.

(11) The courtroom of *BG* convenes in primordial times. Daniel’s courtroom is eschatological.

¹⁷ “A hundred hundreds” in *BG* (4Q530 2 ii 17) is partially reconstructed, but a plausible reading in my view. Cf. Puech, DJD 31, 36; Stuckenbruck, *Book of Giants*, 119–20.

(12) The courtroom of *BG* convenes on earth. Daniel's courtroom is likely in heaven.

(13) In *BG*, the divine courtroom scene appears in the dream-vision of Ohyah, a sinful giant. In Daniel it is witnessed by Daniel, a righteous and worthy human being. In each case, the meaning of the vision is unclear and requires interpretation by a second figure. For Ohyah it is the worthy human Enoch, and for Daniel it is "one of the attendants," an angel.

From differences (3), (4), (6), and (7) it initially appears that Daniel is the more developed text. But the picture is not entirely consistent. *BG* is longer in three places, represented by differences (1), (5), and (8). Even so, many scholars have been inclined to view Daniel as the more developed text, both literarily and theologically. Loren Stuckenbruck has been a prominent advocate of this approach.¹⁸ According to him, the expansive account of judgment in *BG* (difference [8]; as far as I can see, he does not explicitly explain the other instances where *BG* is expansive) should not be taken to mean that *BG* is more developed. Rather, it may be understood as an addition to the otherwise more original form of the tradition emanating from "the author's particular concern with the assurance that God's judgment against the giants is irreversible and final."¹⁹ This emphasis would be a polemical response to certain Hellenistic-Jewish traditions of the early to mid-second century BCE (vestiges of which are also to be found in rabbinic literature), according to which some giants survived the flood and mediated learning and culture to humanity through the likes of Abraham.²⁰ As for the extra details in Daniel, for Stuckenbruck they were more likely added to Daniel than removed from *BG*. A linchpin in his argument is difference (4), the differing numbers of attendants recorded in each text. The numbers are far more likely to have been inflated than diminished, so it is likely that *BG*'s "hundreds" and "thousands" are more faithful to the original tradition than Daniel's "thousands" and "ten thousands." Moreover, he argues that it is more likely that the description of the throne and the figure seated upon it were added by Daniel than that they were removed by *BG*. The addition of these details is explained as stemming from the "formative influence" of the chariot-throne vision of Ezekiel 1²¹ and the account of Enoch's ascent

18 See also Puech, DJD 31, 13–14; E. Eshel, "Possible Sources of the Book of Daniel," in *Book of Daniel*, 2:390–92.

19 "Daniel and Early Enoch Traditions," 383.

20 See Stuckenbruck, *Book of Giants*, 31–40.

21 For the use of Ezekiel 1 in Daniel 7, see, e.g., D. Halperin, *Faces of the Chariot: Early Jewish Responses to Ezekiel's Vision* (TSAJ 16; Tübingen: Mohr [Siebeck], 1988), 74–78; C. Rowland, *The Open Heaven* (New York: Crossroad, 1982), 95–113.

to heaven in *1 Enoch* 14. This latter text has been especially prominent in discussions of the source history of Daniel 7:9–10 in relation to *BC* and therefore warrants further discussion.

1 Enoch 14 is a key chapter in the *Book of the Watchers*, one of the earliest parts of the book of *1 Enoch* (middle of the third century BCE and earlier).²² In this passage, Enoch is commissioned by God to pronounce judgment on the sinful watchers. In a vision he ascends to the heavenly temple and beholds the deity's throne-room. Although the vision is not of the divine courtroom, the court motif is fundamental to the context (Enoch is sent to pronounce judgment at the end of the vision).

Daniel 7:9–10

As I looked on,
Thrones were set in place,
And the Ancient of Days sat down.
His garment was like white snow,
And the hair of his head was like
lamb's wool.
His throne was tongues of flame;
Its wheels were blazing fire.

A river of fire streamed forth before
him;

*1 Enoch 14:18–23*²³

And I was looking,
And I saw a lofty throne;

And its appearance was like ice;
And its wheels were like the shining
sun;
And its <guardians> were cherubim;
And from beneath the throne issued
streams of flaming fire.
And I was unable to see.
And the Great Glory sat upon it;
His raiment was like the appearance
of the sun and whiter than much
snow.

22 See G. Nickelsburg, *1 Enoch 1* (Hermeneia; Minneapolis: Fortress Press, 2001), 230; J. Charlesworth, "A Rare Consensus among Enoch Specialists: The Date of the Earliest Enoch Books," *Hen* 24 (2002): 225–34.

23 Unfortunately no Aramaic version of *1 En.* 14 has survived from antiquity. For an attempt to retrovert the text to Aramaic for the purpose of comparison with Daniel 7, see H. Kvanvig, *Roots of Apocalyptic: The Mesopotamian Background of the Enoch Figure and of the Son of Man* (Neukirchen-Vluyn: Neukirchener Verlag, 1988), 561–62. The text and translation presented here follow Nickelsburg, *1 Enoch* 1, 257.

And no angel could enter into this house and behold his face because of the splendor and glory; and no flesh could behold him.

Flaming fire encircled him, and a great fire stood by him; and none of those about him approached him.

Thousands upon thousands were serving him;
Ten thousand times ten thousand were standing before him;

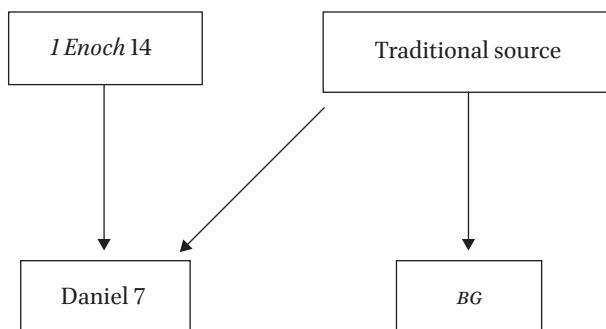
Ten thousand times ten thousand stood before him; but he needed no counselor; his every word was deed;

And the holy ones of the watchers who approached him did not depart by night, nor <by day> did they leave him.

The court sat and the books were opened.

There is a general recognition that both texts are genetically related to earlier biblical throne visions, especially Ezekiel 1. Moreover, the common appearance in each passage of elements that appear nowhere in the earlier biblical throne visions, such as the river(s) of fire, the whiteness of God's clothing and its comparison to snow, and the entourage of ten thousand times ten thousand, is widely taken as an indication of some sort of literary dependency.²⁴ Perhaps due to the consensus that *1 Enoch* predates Daniel 7, there has been a tendency to view the former as a seminal source for the latter. This, in fact, is Stuckenbruck's view. Thus, returning to his explanation of the tradition-historical relationship between *BG* and Daniel 7, the extra description of the throne and the enthroned one in Daniel is understood as drawing directly from *1 Enoch* 14 (as well as Ezekiel 1). *BG*, on the other hand, was uninterested in these speculative details and remained more faithful to its underlying source. Stuckenbruck's view may be summarized visually as follows:

²⁴ See, however, Collins, *Daniel*, 300, who suggests that "direct literary influence cannot be proven" (even as he hypothesizes about possible directions of influence). See also now Trotter, "Tradition of the Throne Vision," 460, who posits that these two works are "independently relying on a shared, but still slightly changing, oral tradition about the appearance of the divine throne."



There are good reasons to question this schematization. First of all, while the *Book of the Watchers* does predate Daniel 7, it may still be the case that Daniel preserves the older throne vision tradition. This position has been argued convincingly in a recent study by Ryan Stokes.²⁵ His argument rests on two main observations. The first derives from the following comparison.

Daniel 7:9

And the Ancient of Days sat down.
His garment was like white snow,
And the hair of his head was like
lamb's wool.

1 Enoch 14:20–21

And the Great Glory sat upon it;
His raiment was like the appearance
of the sun and whiter than much
snow.

And no angel could enter into this
house and behold his face because of
the splendor and glory; and no flesh
could behold him.

Both of these passages begin with a vision of the enthroned deity and move immediately to the whiteness of his clothing, followed by details of his appearance. The shared sequence reinforces the impression of a close relationship between the accounts. But whereas Daniel provides the “lamb’s wool” simile engendering the anthropomorphic image of God as an elderly white-haired man, *1 Enoch* refrains from such a physical description and emphasizes that his face could not be seen due to the “splendor and glory.” The image in Daniel has been related to portrayals of the Canaanite god El surrounded by his council found in the Ugaritic corpus.²⁶ Strikingly, while no other biblical passage refers

²⁵ Stokes, “Throne Visions,” 340–58.

²⁶ See, e.g., J. A. Emerton, “The Origin of the Son of Man Imagery,” *JTS* 9 (1958): 225–42.

to God's hair or its color, the grey beard of El is mentioned in the Ugaritic texts, and he is also called "Father of Years" (*'ab šnm*), an epithet similar in meaning to "Ancient of Days," which is a biblical *hapax legomenon*.²⁷ By contrast, by stating that God's face cannot be seen, *1 Enoch* is in harmony with biblical tradition (see Exod 33, Judg 13, and Isa 6). It is unlikely, avers Stokes, that "Daniel would replace the glorious God, upon whom neither humans nor angels can cast their gaze, with the superbly anthropomorphic gray-haired old man. One would expect, on the other hand, an ancient Jewish author to alter Daniel's vision according to the biblical tradition that one cannot see God."²⁸ Indeed, this explanation would be harmonious with the trend in Jewish apocalyptic literature of this period to increasingly avoid anthropomorphic imagery.²⁹ Moreover, if *1 Enoch* 14 has in fact transferred the scene to the heavenly temple setting, it would suit the author of Daniel's agenda to include the glory language and to alter the description of the deity. It appears that the anthropomorphic Ancient of Days has been replaced in *1 Enoch* 14 by the Great Glory of the heavenly temple, who is too glorious to be viewed. On the other hand, if we imagine that Daniel 7 is dependent on *1 Enoch* 14, it would be very difficult to explain why the author of Daniel would add details concerning his "ancient" appearance.

The second point derives from a comparison of the following isolated passages.

Daniel 7:10

Ten thousand times ten thousand
were standing before him;
The court sat and the books were
opened.

1 Enoch 14:22

Ten thousand times ten thousand
stood before him;
but he needed no counselor; his
every word was deed.

Each text speaks of ten thousand times ten thousand attendants who are standing. In Daniel, these details are followed by the convening of the court. The resulting image is of the Ancient of Days seated as the chief justice surrounded by a panel of counselors. In *1 Enoch*, however, the same exact details about the

27 For El's grey beard, see CTA 3.5.10; 4.5.65–66. For the epithet "Father of Years," see CTA 1.3.24; 4.4.24; 6.1.36; 17.6.49. For different possible interpretations of the phrase *'ab šnm*, see B. Becking, "Ancient of Days," in *Dictionary of Deities and Demons in the Bible* (2d ed.; ed. K. van der Toorn, B. Becking, and P. van der Horst; Grand Rapids, Mich.: Eerdmans, 1999), 44–45.

28 Stokes, "Throne Visions," 347.

29 See C. Rowland, "The Visions of God in Apocalyptic Literature," *JSJ* 10 (1979): 137–54.

attendants are followed by what appears to be a manipulation of the tradition in Daniel (or a source like it). The text clarifies that God has no need to confer with this multitude (or, for that matter, with anyone else) in order to determine judgments. The attendants are mere servants, and God comes to decisions by himself (cf. Isa 40:13–14). Stokes suggests that the removal of the divine council in *1 Enoch* might be a further function of the transference of the scene to the heavenly temple. Since the Great Glory is seated in the celestial holy of holies, he is completely unapproachable and thus separated from potential advisors. Whether or not this is the motivation, Stokes appears to be correct that once again it is *1 Enoch* that has altered Daniel (or a source like it) and not the other way around.³⁰

It is worth mentioning a third observation by Stokes that may point in the same direction. Daniel 7 refers to “one like a human being” who “came with the clouds of heaven” while *1 Enoch* 14 makes no such reference.³¹ It may be the case that this role has been adapted to Enoch, who is summoned by the clouds and lifted to the heavens by the wind in his vision (*1 En.* 14:8).³² Unlike the figure in Daniel, however, Enoch is terrified and paralyzed before he can approach God’s throne. Again, this may be seen as an outgrowth of the transference of the scene to the heavenly temple in *1 Enoch* 14. No human, not even Enoch, may approach the Great Glory seated in the celestial holy of holies.

The above reflections call into question Stuckenbruck’s explanation of the relationship between Daniel 7 and *BG*. Since it is likely that *1 Enoch* 14 has drawn from the tradition found in Daniel 7 (or a similar source), the extra details in Daniel vis-à-vis *BG* (the description of the throne, the enthroned one, and the one like a human being) should not be explained as accretions drawn from *1 Enoch*.³³ Moreover, if the *Book of the Watchers*, which nearly all scholars date

30 For a recent critique of Stokes’ position, see Trotter, “Tradition of the Throne Vision,” 457–60. He contends that “all of the additional material in *1 Enoch* does not demand to be seen as a direct reaction to Daniel’s vision, which is necessary to suggest that *1 En.* 14 is a theologically motivated adaptation.” While I would agree that some details in *1 En.* 14 do not appear to reflect a theological response, this does not negate the possibility that others do.

31 See, however, the later *Book of Parables* (*1 En.* 37–71), which clearly depends on Daniel 7 and identifies Enoch with the “Son of Man” figure.

32 See Stokes, “Throne Visions,” 349–51.

33 As for the sources of Daniel, it has been noted above that the speculation about the appearance of the deity relates to Canaanite tradition preserved in texts dated more than a millennium earlier. The appearance of the throne and its blazing wheels draws from Ezekiel 1, and, as Michael Segal has recently argued in an as-yet unpublished paper (“The Theological Background of Daniel 7”), the one like a human being may be seen as

prior to *BG* (and which some identify as one of the principal sources of *BG*), has manipulated the courtroom scene tradition found in Daniel 7 (or a similar source), then it is certainly possible that *BG* has done something similar. If *BG* has indeed removed these extra elements, then his editorial work would represent an even more extreme transformation than that attested in *I Enoch* 14. Unlike the latter, there is no description of the throne or the enthroned one at all. And there is no hint of a figure comparable to the one like a human being. There are several possible explanations for these moves vis-à-vis Daniel—and here some of the contextual differences noted above will be useful. For example, since the courtroom of *BG* is set on earth (a more appropriate setting for the vision of a culpable giant than heaven), the editor may have been driven to remove such numinous details as Daniel's river of fire. The omission of speculation about the throne and enthroned one might be explained as stemming from the identity of the visionary. Ohyah is a sinful giant, and attributing such a detailed vision to him would improperly put him in the company of such worthy visionaries as Daniel, Enoch, and Ezekiel. As for the one like a human being, there is no room for such an eschatological figure in the primordial context of *BG*.³⁴

Strong support for the position that *BG* has manipulated Daniel 7 (or a tradition like it) may be garnered from differences (5) and (6) noted above.

BG

Daniel 7:10

A hundred hu]ndreds were serving
him,
A thousand thousands [(were) ...]
him.

Thousands upon thousands were
serving him.
Ten thousand times ten thousand
were standing before him.

[A]ll were standing [b]efore him.
And behold, [book]s were opened.

The court sat
and the books were opened.

an inner-biblical exegetical development of Deuteronomy 32:7–8 and Psalm 82. I thank Dr. Segal for sharing his work with me.

34 Moreover, the absence of the prime candidate for even a modified version of this role, the patriarch Enoch, is fundamental to the narrative of *BG*. Since the giants are puzzled by their visions they must make efforts to approach Enoch for the correct interpretation.

The *BG* text is fragmentary, but enough has been preserved to enable a meaningful comparison. The sequence is remarkably similar. Each starts with the attendants serving and ends with the books being opened. The *BG* text, however, shows signs of reacting to the Daniel tradition. Three cola, not two, are designated for the acts of the attendants. Precisely where Daniel indicates that the court sat, *BG* maintains that “all” remain standing. The implication is that, as is maintained also by *I Enoch* 14, God is not advised by the entourage and renders judgment by himself. The proposal that it is *BG* that has made the move away from Daniel finds support in the fact that *BG*, like Daniel, mentions the setting up of a plurality of “thrones” at the beginning of the vision. The many thrones befit the context in Daniel, where other members of the divine tribunal are seated around God, but in *BG* they are superfluous. God alone is seated while “all” stand before him. Thus, the reference to thrones in *BG* may be explained as an authentic vestige of the Daniel tradition inadvertently left in the account by the *BG* editor.³⁵ At the same time the inflated numbers in Daniel suggest that the relationship cannot be explained simply as *BG* borrowing directly from Daniel. Daniel too has modified the earlier source. This original tradition upon which both *BG* and Daniel depend likely included a plurality of thrones for the seated divine court as well as attendants numbering in the hundreds and thousands.³⁶

3 Contextual Comparison

I turn now to the function of the divine courtroom scenes in their respective literary contexts. Broadly, both accounts are concerned with the eruption of chaotic forces in the world that are represented by frightening hybrid creatures. In both, the divine helmsman is concerned to corral the earthly mayhem and, as is to be expected in Jewish apocalyptic thought of the Second Temple period, there is never a question of the correctness of God's judgment or the justice of his overall plan.³⁷ No actual trial is necessary as the guilt of the monstrous defendants is obvious to all. Despite these similarities, it is clear that *BG*

35 So Stokes, “Throne Visions,” 354–55.

36 While the *Book of the Watchers* probably is earlier than and may even have served as a direct source for *BG*, it appears that at this point in the narrative *BG* relied on the courtroom tradition behind Daniel rather than the celestial temple vision of *I Enoch* 14.

37 Cf. M. Z. Kensky's summation of Second Temple period portrayals of the divine court: “Nowhere do we have an *Apocolocyntosis*, nowhere is the system described as being corrupt” (*Trying Man, Trying God* [WUNT 2/289; Tübingen: Mohr Siebeck, 2010], 180).

and Daniel deploy the same traditional image of the divine courtroom in the service of two very different apocalyptic orientations.³⁸ The divergent perspectives become especially apparent when the contextual differences noted above (and particularly differences [9], [10], and [11]) are considered in further detail.

3.1 *BG*

Like the rest of the voluminous Enochic lore of the Second Temple period, *BG* espouses a specific mythological explanation of the origins of evil and, in turn, of the present state of things in the world. Evil on earth originates not with the disobedience of the first human beings, Adam and Eve, but rather with the rebellion of heavenly beings, the watchers, against God.³⁹ This rebellion leads directly to the conception of the race of the giants, characterized aptly by George Nickelsburg as “the incarnation of the rebellious spirit-nature of their fathers . . . destined for lives of continued rebellion against God and violence against his creation.”⁴⁰ Indeed, creation, including all of humanity, must endure the unhindered violence until God’s intervention, which comes in the form of the great primordial flood. The giants drown in the flood, but their disembodied spirits survive as demonic forces that continue to afflict humanity, though in an attenuated form.⁴¹ According to this etiological myth, then, the persistence of evil in the present post-flood reality is understood as springing from demonic forces ultimately linked to heavenly rebellion in the pre-flood era. Fundamental to this worldview is the conviction that the current freedom of the demons to trouble humanity is only temporary. At the final judgment, the job that God had begun with the flood would be completed, and demonic affliction would end.

While *BG* is fragmentary and does not include all of the details of the composite of the Enochic myth offered above, it is clearly appropriate to understand the function of *BG*’s divine courtroom scene with the aid of some of these details. At the narrative level, the moment of God’s intervention for the wicked acts of the giants is announced through the dream-vision of Ohyah. The advent

38 *BG* is technically not an apocalypse in genre (while Daniel is), but the worldview espoused therein is clearly apocalyptic.

39 For the opposition between the “Enochic axis” and the “Adam and Eve axis,” see M. E. Stone, *Ancient Judaism: New Visions and Views* (Grand Rapids, Mich.: Eerdmans, 2011), 51–58.

40 “Apocalyptic and Myth in *1 Enoch* 6–11,” *JBL* 96 (1977): 389.

41 According to *Jubilees* 10, for instance, only ten percent of these wicked spirits are granted to Satan to wreak havoc on earth in the post-deluge era until the final judgment. The other ninety percent are imprisoned and awaiting punishment. Cf. *1 En.* 15:8–12.

of the divine court on earth functions as a reminder to the audience that a just judge controls earthly chaos and that wickedness will not be left without punishment. But it must be asked how this reassuring image set in primordial times interfaces with an audience living in the post-flood reality. Two possible answers present themselves, and I do not believe them to be mutually exclusive. The first springs from the etiological approach to the myth sketched above. If *BG* shares the common Enochic assumption that the giants continued to exist as spirits after the flood, then the demons actively causing evil in the world of the audience would be conceived of as defeated spirit powers that had already suffered a decisive setback in primordial times and that were poised for total annihilation at the final judgment.⁴² The audience would thus perceive the divine courtroom scene of *BG* not only as a primordial announcement of the “historical” destruction of the bodies of the giants in the *Urzeit*, but also as a proleptic announcement of the imminent destruction of their spirits in the *Endzeit*. This would tally well with the insistence of *BG* (unique in Enochic lore) that the judgment announcing their own doom is revealed directly to the giants. This indeed seems to reflect the view that the giants will continue to exist only as defeated powers cognizant of their vast inferiority and vulnerability in the face of the power of God.⁴³

A second possible answer to the question of how the scene of ante-diluvian judgment might relate to the post-diluvian audience arises from a paradigmatic approach to the myth. According to this option, the myth reflects the projection of a perceived historical crisis to the mythological plane by an author within a third or second century BCE milieu. By omitting any explicit reference to a “real” historical crisis and projecting it into the primordial mythological realm, the anxiety caused by the comparatively insignificant historical events experienced by the author is defused.⁴⁴ In this case, Ohyah’s vision would represent a paradigm for the judgment of real historical oppressors (perhaps Seleucids?) and the vindication of the oppressed Jewish audience.⁴⁵

42 See Stuckenbruck, *Book of Giants*, 39–40. Although the flood is not narrated explicitly in *BG*, there are several allusions to it within the dream visions of the giants, including, perhaps, that of Ohyah. See, e.g., 4Q530 2 ii 7–12, 19–20; 6Q8 2; 2Q26.

43 See Stuckenbruck, *Book of Giants*, 39–40. He cites for comparison several NT passages that indicate that demons are well aware of their subservience to God.

44 See further J. J. Collins, “The Apocalyptic Technique: Setting and Function in the Book of Watchers,” *CBQ* 44 (1982): 91–111; idem, *The Apocalyptic Imagination: An Introduction to Jewish Apocalyptic Literature* (2d ed.; Grand Rapids, Mich.: Eerdmans, 1998), 49–51.

45 This approach has been applied to the *Book of the Watchers* by scholars such as D. Suter (“Fallen Angel, Fallen Priest: The Problem of Family Purity in 1 Enoch 6–16,” *HUCA* 50 [1979]: 115–35) and G. Nickelsburg (“Apocalyptic and Myth”). Although the *Book of the*

Moreover, the unique feature of the revelation of doom-judgment directly to the giants could be construed as a reflection of the belief that the author's historical oppressors will be humbled by their awareness of their ultimate fate. The motif of the humbling of arrogant and wicked oppressors through the revelation of their inferiority vis-à-vis God is of course well-attested in Second Temple literature. One is reminded, for instance, of King Belshazzar's frightful vision of the writing on the wall in Daniel 5 (see also Nebuchadnezzar's dream visions interpreted by Daniel in chapters 2 and 4). Like Ohyah, the arrogant king is not immediately aware of the meaning of the vision and he must call in a venerated visionary to interpret and deliver the bad news of the decree to take away his power. Another interesting example is found in 2 Maccabees, where Antiochus IV is humbled not by a vision, but by a horrible illness sent by God: "Thus he who only a little while before had thought in his superhuman arrogance that he could command the waves of the sea, and had imagined that he could weigh the high mountains in a balance, was brought down to earth and carried in a litter, making the power of God manifest to all" (9:8). At the height of his suffering, a defeated Antiochus exclaims "It is right to be subject to God; mortals should not think that they are equal to God" (9:12). Note also the telling words put into the mouth of Antiochus in 1 Maccabees 6:11–13: "I said to myself, 'To what distress I have come! And into what a great flood (κλύδωνος μεγάλου) I now am plunged! . . . But now I remember the wrong I did in Jerusalem . . . I know that it is because of this that these misfortunes have come upon me.'" In the light of *BG*, it is suggestive that Antiochus equates the punishment for his sinful acts to being in the midst of a great flood. This is not to argue that there is a direct relationship between *BG* and this or any of the above texts. Rather, it suggests a possible motive for *BG*'s unique claim that the judgment of the divine courtroom was revealed to the giants directly. Following the paradigmatic approach, it cannot be ruled out that *BG* is mythologizing the experience of oppression suffered under the Seleucids. The attribution of Babylonian names to the giants Gilgamesh and Hobabish is indeed consistent with an attitude of hostility toward Babylonian-Hellenistic figures of power.⁴⁶

Watchers predates *BG*, it is conceivable that *BG* could have adapted Enochic traditions about the giants in response to a separate historical crisis.

- 46 See, e.g., D. Jackson, "Demonising Gilgameš," in *Gilgameš and the World of Assyria: Proceedings of the Conference held at Mandelbaum House, The University of Sydney, 21–23 July 2004* (ed. J. Azize and N. Weeks; ANES 21; Leuven: Peeters, 2007), 107–14.

3.2 *Daniel 7*

Daniel 7 does not share *BG*'s concern for primordial times. All that is deemed important in history is represented by the four kingdom schema.⁴⁷ Since the four beasts are likely to be identified with the empires of Babylonia, Media, Persia, and Macedonia, the schema is oriented toward the historical upheaval experienced by Jews from the Babylonian exile of the sixth century to the time of the author living under Macedonian (Seleucid) hegemony. Early Israelite history is ignored. Whereas *BG* makes clear that the wicked acts of the giants on earth stem from a heavenly rebellion, according to Daniel the four beasts are said to arise from "the great sea." In Canaanite myth, Yamm, the god of the sea, is personified as the challenger of the storm god Baal.⁴⁸ Similar mythical currents are present in biblical tradition, where the sea is often employed as a symbol of the primeval chaotic forces opposed to the divine will (e.g., Job 26:12–13; Ps 89:9–11; cf. Isa 51:9–10; 17:12–14). Since the monsters derive from the mythological waters, the empires they represent are rightly understood as manifestations of the primordial forces of chaos. The integration of the historical crisis of Seleucid domination and persecution into the mythic pattern of the primordial struggle between God and chaos produces a couple of notable results for the audience. First, it transforms the suffering of the righteous at the hands of the wicked from a potentially random and meaningless experience to an earthly manifestation of an all-encompassing transcendent fabric of meaning. Second, since the gentile empires are the earthly shadows of metaphysical chaotic forces, the active resistance of the Jews is futile. Only heavenly intervention could work and this would take place only when the pre-ordained evil had run its course.

Although the four beasts and the empires they represent are rightly understood as manifestations of the primordial forces of chaos, a close reading of the chapter reveals that the beasts are not entirely independent but rather controlled by a higher power, presumably God. Thus the first beast is made to stand on two feet and given a human heart (v. 4). The second is commanded to "arise, devour much flesh" (v. 5). The third is granted "dominion" (v. 6). Only the fourth beast, explicitly described as "different from all the others," appears to act independently of divine authority: "It devoured and crushed, and stamped the remains with its feet . . . [it had a horn with] a mouth that spoke arrogantly" (vv. 7–8). However, from the ensuing interpretation of the

47 On the Iranian background of this typical apocalyptic schema as well as its popularity in Greco-Roman times, see the classic study of J. W. Swain, "The Theory of Four Monarchies: Opposition History under the Roman Empire," *Classical Philology* 25 (1940): 1–21.

48 See, e.g., CTA 2.4.

vision (vv. 17–27) it becomes clear that all the beasts, including the fourth, have been granted dominion by God willfully.⁴⁹

But what motivated God to commission the rise of these monstrous powers on earth and the concomitant suffering of his chosen people in the first place? It has been claimed that Daniel's answer to this question is articulated in the prayer preserved in chapter 9.⁵⁰ There, in Deuteronomic fashion, Daniel expresses his view that the degeneration of history and the increased suffering of the Jewish people is the direct result of their wholesale abandonment of the Torah: "All Israel has violated your teaching and gone astray . . . so the curse and the oath written in the Teaching of Moses, the servant of God, have been poured down upon us, for we have sinned against him" (Dan 9:11). If these words may be used to understand the rise of the monsters in chapter 7, then this vision would constitute a fundamentally different worldview from the one espoused by BG. The hybrid creatures terrorizing the earth would be understood as stemming from human (and specifically Jewish) disobedience, not angelic sin. The creatures would essentially be subservient instruments of God's wrath rather than rebellious opponents of God's created order. The problem of course is that there is little justification to read Daniel 7 in this way. There is no hint of Jewish sin in the chapter (or elsewhere in the book); only the arrogance and horrendous acts of the fourth beast/Seleucid Empire are emphasized, and the progression of history is preordained quite apart from any consideration of Torah observance. Moreover, it has been demonstrated that the theology of history in Daniel's prayer is rejected in the angelic response that immediately follows it, and that the prayer is better understood as an act of piety on Daniel's part than as an accurate reflection of the theology of the author.⁵¹

A more plausible reading of Daniel 7 in my view is that it is not concerned with explaining the origins of evil, but rather with clarifying its nature and, most importantly, with promising its imminent end. We are not told how evil

49 Regarding the fourth beast in particular see vv. 26–27.

50 See G. Boccaccini, *Beyond the Essene Hypothesis: The Parting of the Ways between Qumran and Enochic Judaism* (Grand Rapids, Mich.: Eerdmans, 1998), 81–86.

51 This is especially clear from the response of the angel Gabriel that immediately follows the prayer, which makes clear that history will continue on its preordained path regardless of prayer or repentance. See further B. W. Jones, "The Prayer in Daniel IX," *VT* 18 (1968): 488–93; W. S. Towner, "Retributional Theology in the Apocalyptic Setting," *USQR* 26 (1971): 203–14; Collins, *Daniel*, 360. Most recently, see L. DiTommaso, "Penitential Prayer and Apocalyptic Eschatology in Second Temple Judaism," in *Prayer and Poetry in the Dead Sea Scrolls and Related Literature: Essays in Honor of Eileen Schuller on the Occasion of Her 65th Birthday* (ed. Jeremy Penner, Ken M. Penner, and Cecilia Wassen; STDJ 98; Leiden: Brill, 2012), 115–33, esp. 117–23.

came to exist nor why it has been unleashed on earth, only that it indeed does exist in the form of the gentile political domination represented by the beasts. Rather, the main concern is to illustrate God's supreme control of history. In this schema, evil indeed functions to illustrate God's supremacy; it exists only to be punished by God. By guaranteeing that wickedness will be met with punishment and that suffering will be balanced with reward, Daniel's divine courtroom scene functions to illustrate that God reigns over the malevolent forces behind the degeneration of history and that the cosmic plan is just. The outcomes of the divine courtroom's judgments also underscore the mirror imagery between heavenly and earthly realms. The execution of the fourth beast and the granting of dominion to the one like a human being above have their immediate consequences below, namely the liquidation of Seleucid power and the granting of dominion of "all the kingdoms under heaven" to the Jews, "the people of the holy ones of the Most High" (v. 27).

In sum, analysis of the literary contexts in which the divine courtroom scenes of *BG* and Daniel 7 appear illustrates divergent apocalyptic orientations. The myth of *BG* explains both the origin and nature of evil (it stems from angelic sin and is demonic). While the story is set in primeval times, it is actually concerned with two temporal planes: the ante-diluvian *Urzeit* and the post-diluvian *Endzeit*. The primordial appearance of the divine courtroom is not only an announcement of the impending "historical" destruction of the giants, but also a proleptic announcement of the final universal salvation from the plagues of the demons, the defeated spirits of the giants. At the same time, a paradigmatic approach to *BG*, according to which the divine court scene represents a mythologically projected model for the judgment of real Hellenistic-Mesopotamian oppressors and the vindication of the oppressed Jewish audience, is also conceivable. By contrast, Daniel 7 is more clearly directed toward a specific historical crisis—the Antiochan persecution of 167 BCE. The passage does not explain why evil has been unleashed on earth, but only that it exists in the form of the gentile empires. It is concerned only with exilic and post-exilic history and its impending end. Rather than working on two temporal planes, the mythological framework operates on two spatial planes, the mirrored realms of heaven and earth. The evils of gentile dominion on earth are a mere reflection of a pattern of mythological superhuman struggle. The divine courtroom scene illustrates God's supremacy over primordial chaos as well as its earthly manifestations in history. Indeed, the heavenly outcomes of the convening of the divine court have direct reflexes on earth. The conviction and execution of the fourth beast and the granting of dominion to the one like a human being in the celestial realm translates on earth into the fall of the Seleucids and the national-political salvation of the Jewish people.

4 Conclusion

The fact that the differing apocalyptic works of Daniel 7 and *BG* make use of the same divine courtroom tradition brings up the interesting question of the social matrix in which such sharing occurred. The complexity of this topic does not allow for a full consideration in the present context so I limit myself here to just a few speculative remarks. On the one hand, the shared tradition might be thought to indicate adaptations by different authors in a common social group with a broad apocalyptic worldview. This possibility would be in accord with an influential hypothesis put forward by Martin Hengel in the 1970s that both the Danielic and some of the early Enochic literature stemmed from the Hasidim, a group of pious militants that initially supported the Maccabean revolt and that Hengel identified as the parent group of both the Pharisees and the Essenes.⁵² However, Hengel's approach has been criticized for, among other things, not adequately accounting for key differences distinguishing the apocalyptic perspectives of the Danielic and Enochic corpora (some of which have been observed above). According to Gabriele Boccaccini, the dividing issues include the legitimacy of the temple (Daniel defends it, Enoch does not), the centrality of the Torah (for Daniel it is central, for Enoch it is not), the method of confronting Seleucid oppression (Daniel espouses passivity, Enoch active resistance), and differing conceptions of the origins of evil. Such differences indeed make it unlikely that the two bodies were produced by the same group. Instead, he posits that they originated in ideologically opposed parties.⁵³

The issue may be complicated, however, by the evidence of the so-called pseudo-Daniel texts discovered at Qumran (4Q243–245). These manuscripts have been shown to contain an intriguing mixture of Danielic and Enochic elements. For example, on the one hand Daniel is mentioned by name several times and the narrative is set in the court of a foreign king. On the other hand, there is a pronounced interest in primordial history, the name Enoch is mentioned, and Israel is said to be led astray by “the demons of error” (4Q243–244).⁵⁴ Some scholars assume that this material is dependent on the canonical book

52 See M. Hengel, *Judaism and Hellenism* (2 vols.; Philadelphia: Fortress Press, 1974), 1:175–80. The Hasidim are only known from three passages in the books of Maccabees (1 Macc 2:42; 7:12–16; 2 Macc 14:6).

53 See Boccaccini, *Beyond the Essene Hypothesis*, 81–86. Specifically, he is comparing Daniel and the Enochic *Book of Dreams* (1 En. 83–90), but his distinctions apply to other early Enochic writings as well. For a more extensive argument, see idem, *Middle Judaism: Jewish Thought 300 BCE to 200 CE* (Minneapolis: Fortress Press, 1991), 126–60.

54 See further Stuckenbruck, “Daniel and Early Enoch Traditions,” esp. 371–77.

of Daniel.⁵⁵ Aligning himself with this position, Boccaccini interprets these manuscripts as an attempt by the Qumran sect to make Daniel “compatible with Enochic Judaism,” with which the Qumranites were closer ideologically. There is no compelling evidence, however, demonstrating that the pseudo-Daniel material is dependent upon the canonical Daniel. It may just as well have depended on common traditions and circulated independently.⁵⁶ Given this doubt, Stuckenbruck offers another possible explanation of the fragments: they “show a cross-fertilization between intellectual traditions associated with both Daniel and Enoch. These traditions would have been in a state of flux, not only after but perhaps also before and during the Maccabean crisis.”⁵⁷ This suggestion represents an important caution to those who would posit too rigid a connection between apocalyptic traditions and clearly distinguishable social groups. If Danielic and early Enochic traditions indeed originated in different circles, it appears that the borderlines delineating these circles were permeable. The pseudo-Daniel texts attest that the Enochic and Danielic apocalyptic traditions were not always understood in isolation from one another, and the shared divine courtroom tradition of Daniel 7 and BG demonstrates that they could draw from a common pool of extra-biblical tradition.

55 See, e.g., García Martínez, *Qumran and Apocalyptic*, 137–49; É. Puech, *La Croyance des Esséniens en la vie future: immortalité, resurrection, vie éternelle* (Paris: Gabalda, 1993), 568–70.

56 See J. J. Collins and P. Flint, in G. J. Brooke et al., *Qumran Cave 4.XVII: Parabiblical Texts, Part 3* (DJD 22; Oxford: Clarendon Press, 1996), 134–36.

57 Stuckenbruck, “Daniel and Early Enoch Traditions,” 376.

Justice without Judgment: Pure Procedural Justice and the Divine Courtroom in *Sifre Deuteronomy*

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The book of Job, one of the most famous protests against cosmic injustice in world literature, imagines a path out of despair: a fair trial. “O that I had someone to give me a hearing; / O that Shaddai would reply to my writ, / Or my accuser draw up a true bill! / I would carry it on my shoulder; / Tie it around me for a wreath” (Job 31:35–36).¹ While a trial will not necessarily restore Job’s family, health, and fortune (one takes one’s chances), it may provide outcomes of considerable significance: it may “preserve the honor of both parties [to the dispute]”; it may establish truth and “get the story right”; and it may “restore a possible sense of agency to Job,” who feels persecuted and powerless before the omnipotent deity.² The “happy ending” of the book of Job, in which God reinstates Job to his prior position of wealth and comfort rings hollow, because God does so by fiat; God is still an autocrat, only now a benevolent one. A trial, however, would feel different. In the courtroom, “God . . . could conceivably be envisioned as . . . provisionally setting aside the terrifying overwhelmingness of his own power in order to allow his opponent at law to speak.”³ Job’s hypothetical trial with God emerges, essentially, as a fantasy of procedural justice.

One place in which the rabbis wrestle with such a fantasy of procedural justice is in the tannaitic commentary to the last book of the Torah, *Sifre Deuteronomy*. There the rabbis offer us almost comical depictions of the divine courtroom, discovering in heaven an adherence to formal or even bureaucratic procedures. Despite the otherworldly setting, and despite the presumption of divine omniscience and omnipotence, rabbinic authors dispense with splendour and ministering angels flanking the divine throne and instead concentrate on procedural details like numbers of witnesses and their fitness to testify. While it may appear that the rabbis simply attempt to correlate worldly justice and heavenly justice, there is a fundamental absurdity to the formalism in

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1 Quotations from the Hebrew Bible follow the NJPS English translation.

2 C. A. Newsom, “The Invention of the Divine Courtroom in the Book of Job,” this volume, pp. 257, 256, and 253, respectively.

3 Ibid., 251.

these texts that invites us to probe more deeply and ask what theological, philosophical, or theodical work these images of heavenly procedure are doing.⁴

This essay will argue that John Rawls' distinction between types of procedural justice can help shed light on the conceptual difference between rabbinic procedural justice in ordinary courtrooms and as a relational model for God. As the rabbis transfer their robust concept of "justice as fairness" into the heavenly realm, a choice is made to relate to God in ways that emphasize agency, participation, and, indeed, the predictability of law—many basic elements of human dignity, according to modern thinkers, and the type of recognition for which Job desperately hungered. It comes, however, at the expense of what one might see as substantive justice: the ability to assess the justice of the aftermath of fair procedures, to determine whether a person's, or the community of Israel's, current circumstances, are, indeed, just. In several passages in *Sifre Deuteronomy*, the rabbis appear to depict "pure procedural justice" as a model for relating to God and making sense of suffering, but they also begin to apprehend its limitations.

1 John Rawls and Procedural Justice

John Rawls' *A Theory of Justice*, a philosophy of political society built on the social contract and steeped in liberal, enlightenment thought, is surely not easily applicable to the ancient world. However, Rawls' basic premise—justice as fairness—is founded in procedural justice, and as such his theory may be useful as a heuristic tool to understand early rabbinic concepts of justice, which similarly emphasize procedural fairness. In his seminal work, Rawls distinguishes between "perfect," "imperfect," and "pure" procedural justice. "Perfect" procedural justice can be exemplified by the classic cake-cutting dilemma: how does one divide a cake equally between several people so that no one feels cheated? The "obvious solution" (as per Rawls): have the one who cuts the cake choose his or her piece last. This model reveals

two characteristic features of perfect procedural justice. First, there is an independent criterion for what is a fair division, a criterion defined

4 As Meira Kensky observes regarding the image of the divine courtroom, "the reader is in the judicial position, and it is the judge and the process itself which are being adjudicated. When man is tried, it is truly God who is on trial." M. Z. Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (WUNT 2/289; Tübingen: Mohr Siebeck, 2010), 5.

separately from and prior to the procedure which is to be followed. And second, it is possible to devise a procedure that is sure to give the desired outcome.⁵

Justice, therefore, is measured independently from procedure: justice in this case is every person getting an equal share of the cake. The procedure is considered “perfect” because it (theoretically) ensures a correct result every time: by making the cutter choose last, he or she is incentivized to cut each slice into equal shares.

Imperfect procedural justice is similar, but differs only in one characteristic: “While there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it.”⁶ To illustrate imperfect procedural justice, Rawls invokes the criminal trial. We know that justice in that context seeks to “establish truth” and to condemn the guilty and acquit the innocent. But, Rawls reminds us:

It seems impossible to design the legal rules so that they always lead to the correct result . . . Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. An innocent man may be found guilty, a guilty man may be set free.⁷

Once again, then, we have an independent criterion for justice (the truth of guilt and innocence), a fair procedure designed in all respects to produce just results, but the impossibility of ensuring it.

Pure procedural justice differs from both of these models, and for Rawls, it is the cornerstone of a just society. What makes pure procedural justice “pure”? Rawls explains:

Pure procedural justice obtains when there is *no independent criterion for the right result*: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed.⁸

In the pure procedural justice schema, in other words, the outcome is intrinsically just because it resulted from a just system. In fact, as emphasized above,

5 J. Rawls, *A Theory of Justice* (New York: Oxford University Press, 1999), 74.

6 Ibid.

7 Ibid.

8 Ibid. (emphasis mine)

there is *no independent criterion* by which we could judge the justice of the outcome in and of itself. Unlike a criminal trial, in which we posit that there is a substantive truth (the defendant committed the crime or did not) which the trial either gets right or wrong, in pure procedural justice there would be no measure of substantive justice through which the outcome could be evaluated. Rawls' example of pure procedural justice is gambling, in which fair bets are made with "a zero expectation of gain, that the bets are made voluntarily, that no one cheats, and so on." In such a situation, "the distribution of cash after the last bet is fair, or at least not unfair, whatever this distribution is."⁹

For Rawls, pure procedural justice is at the heart of his vision of social/political justice, as "fair bets" translate roughly into equality of opportunity. And therefore the "practical advantage" of this model is that "it is no longer necessary to keep track of the endless variety of circumstances and the changing relative positions of particular persons."¹⁰ Thus, pure procedural justice allows one "to design [a] social system so that the outcome is just whatever it happens to be."¹¹ In Rawls' society, that which appears unjust (unequal slices of the pie, or perhaps cake in this instance), may in fact be understood as just because of the robust (though often obscured) procedural justice by which it is maintained.

2 Rabbinic Procedural Justice: Perfect, Imperfect, or Pure?

Christine Hayes, in her article "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," shows that in rabbinic legal thought, the rabbis had a highly developed sense of what we may now call "imperfect procedural justice." The rabbis in fact lean so heavily on procedural fairness as a standard-bearer of justice *in toto* that, when used in legal contexts, the very word *emet* ("truth") comes to signify "procedural correctness or lack of corruption, rather than authenticity."¹² While the rabbis do recognize a different truth, the truth of

9 Ibid. Gambling might not be the best example of justice in a rabbinic context, given that, for the rabbis, the distributive ethics of gambling are disputable and may be likened to theft.

10 Ibid., 76.

11 Ibid., 74. He adds "at least so long as it is within a certain range," which detracts from his point, because it posits an *independent criterion of justice*, which is of course antithetical to his notion of *pure* procedural justice. But social justice and distributive justice can be somewhat messier than these models can account for.

12 C. Hayes, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," *Diné Israel* 25 (2008): 87.

a “single ‘correct’ answer,” according to Hayes they “accord[] it less respect than might be expected.”¹³ Hayes discusses a case in *Tosefta Sanhedrin* in which the family of an executed convict is required to say to the judges “you have judged a true judgment.”¹⁴ She notes:

The anxiety of the judges is explicit . . . : they fear that those deeply hurt by the death of the convicted parties will hate them. The declaration by the relatives . . . does *not* confirm the substance of the verdict as true; rather, it affirms the personal and procedural integrity of the judges in reaching the verdict. Because the judges’ judgment was not perverse or corrupt, the relatives can hold no grudge, despite the fact that the judgment causes them intense personal pain. . . . [The phrase the family utters] does not assess the justice or correctness of the verdict, and private grieving continues. Indeed, the phrase *din emet* [true judgment] almost seems to mask a deep anxiety about the justice of the verdict.¹⁵

At first this description of the family’s reaction to their relative’s trial and conviction may seem to uphold a model of pure procedural justice, in that the family “does not assess” the correctness of the verdict. But Hayes makes it clear that the rabbis *do* adhere to the notion that there is a correct or incorrect verdict, and that the “deep anxiety about the justice of the verdict” relates to that criterion of assessment. The rabbis fear that their court got it wrong, that they have executed an innocent person, but they prioritize the integrity of the process in order to help allay that fear. What we have here is the classic example of imperfect procedural justice. Justice as fairness is upheld, even as the outcomes may be acknowledged as unjust from time to time.

Indeed, Hayes goes on to show that even in theoretical and ‘legislative’ settings, the rabbis consistently measure the results produced through correct procedure by standards other than procedural ones. These standards include “religious values such as humility, compassion, modesty, peace, or charity”;¹⁶ or “social goods”; or “moral ideals.”¹⁷ Indeed, they seem to have a multivalent approach to social justice, as they question the results even when the procedure is understood to be just. Thus, when it comes to understanding the just

13 Ibid., 74.

14 I also discuss this case in my *Law and Truth in Biblical and Rabbinic Literature* (Bloomington: Indiana University Press, 2010), 90–91.

15 Hayes, “Legal Truth,” 102–3.

16 Ibid., 114.

17 Ibid., 120 n. 83.

polity, unlike Rawls, the rabbis again invoke the notion of imperfect procedural justice.

However, when it comes to assessing divine justice, Hayes gestures toward a somewhat different outlook:

One recites the blessing “Blessed is the True Judge” upon hearing bad tidings . . . or upon seeing some forms of human suffering (such as an amputee, a lame man, a blind man, a man afflicted with boils . . .). The requirement that one assert in the face of evil and suffering that God is a true judge should not be understood as a robust metaphysical claim that the evil and suffering witnessed are ‘just deserts’ for (possibly unknown) sin. Such confidence is absent from these texts. Rather, the assertion serves a psychological and spiritual purpose, shoring up faith in God at a time when that faith is most severely tested and despair threatens. Thus, even when God’s judgment *seems* harsh, cruel, or unjust *one must avoid the blasphemous conclusion that God is a negligent or corrupt judge* and assert the contrary.¹⁸

Hayes spells out the rabbinic approach to *divine* procedural justice by exploring the rabbinic requirement to bless God at moments when faith in God’s benevolence is most tested. When one witnesses what *seem* like cosmic injustices—like, for example, the suffering of Job—we must do two things, according to the tannaitic¹⁹ rabbis: (1) reserve judgment on whether this suffering is substantively just or unjust and (2) affirm God’s adherence to procedural fairness. The rabbinic understanding of procedural justice, when shifted from earth to heaven, also seems to shift from *imperfect* procedural justice to *pure* procedural justice. The texts cited here by Hayes (in addition to *Sifre Deuteronomy* 304, which she cites as well) suggest that we ought not—or cannot—assess the results of God’s dealings in this world by any independent criteria. What we can and must affirm, however, is that God operates fairly and justly.

What makes this appeal to pure procedural justice in the face of cosmic injustice or suffering difficult to grasp, however, is that it is obviously not based on any of Rawls’ (or liberal, or even Aristotelian) criteria for fair process. There is no emphasis on free choice (there doesn’t seem to be any); no appeal to a social contract (though the notion of the covenant is available, the rabbis do not invoke it); and no reliance on the idea of equal opportunity. Instead, there is simply an *assertion* that God’s ways are fair and just: “Before [God] there is

18 Ibid., 102–3 (emphasis mine).

19 The requirement to utter this blessing is found in *Mishnah* and *Tosefta Berakhot*. See Hayes, “Legal Truth,” 103.

no corruption or favoritism" (*Sifre Deut.* 304). To revert back to Rawls' gambling analogy for a moment, the rabbis depict a world in which we have chanced upon a poker game in progress, do not know any of the rules, and simply watch as one person's stack of chips increases while that of others' is depleted. Some players feel joy, while others may grow angry or depressed. But we are given assurances that the rules of the game are fair, even though we cannot assess them for ourselves. Therefore, the rabbis appear to rely on the notion of pure procedural justice when it comes to divine involvement in the world, but it is a far cry from the Rawlsian concept, in which the process is not only fair but transparent. For a fuller depiction of rabbinic images of divine justice, I would like to turn now to two lengthier passages in the *Sifre*.

3 *Sifre Deuteronomy*, the Divine Courtroom, and Pure Procedural Justice

A fairly straightforward rendering of the divine courtroom and its processes comes in a section of *pisqa* 307:²⁰

- A. *For all his ways are justice*—in the future, when He will sit upon the throne of justice, He will sit in judgment on each one and give him what is appropriate for him. . . . *A God of faithfulness*—Just as He grants the perfectly righteous a reward in the world-to-come for his performance of the commandments in this world, so does He grant the perfectly wicked a reward in this world for any minor commandment performed in this world; and just as He requites the perfectly wicked in the world-to-come for any transgression performed in this world, so does He requite the perfectly righteous in this world for any minor transgression committed in this world.
- B. *And without iniquity*—When one departs from this world, all his deeds will come before him one by one and say to him, "Thus did you do on such-and-such a day, and thus did you do on such-and-such other day—do you acknowledge these matters?" And he will reply, "Yes." He will be told, "Sign!" as it is said, *The hand of every man shall seal it, so that all men may know his deeds* (Job 37:7). *Just and right is He*—the man thereupon will justify the ruling and say, "Well was I judged," as it is said, *That You may justify [the judgment] when you speak* (Ps 51:6).

20 Quotations from *Sifre Deuteronomy* follow R. Hammer's English translation and are emended as necessary.

In the first part of this passage (A), we are presented with a fairly standard measure of justice—just deserts. The first comment in the passage is vague—we are informed only that God “gives [each person] what is appropriate for him.” This is a refrain that is repeated throughout several midrashim in the *pisqa*, and its vagueness seems deliberate. Even if we cannot always assess whether a person’s circumstances are just, we trust that God is acting justly (fairly) and giving people what is *appropriate* for them (*‘et hara’ui lo*)—not necessarily what they *deserve* based on a transparent or measurable scale. Justice of outcomes is explicated, however, in the next part of the midrash. Here, we are told explicitly that God is operating with a system of rewards and punishments, and that where the system seems lacking from an earth-bound, human perspective, in fact the rewards and punishments given in the world-to-come make up for these seeming discrepancies.

Given the above scenario—a perfect justice of outcomes—the second half of this midrash (B) seems superfluous. Section B is entirely about procedural justice. Why explicate fair procedure when substantive justice is perfect? In Rawls’ delineation of perfect procedural justice, the contours of the procedure itself are immaterial, as long as the procedure is guaranteed to produce perfect results. In Part A above, the perfect procedure is *a God of faithfulness*, that is, a God who faithfully and reliably keeps track of debts and credits, making sure to requite each in the appropriate world. Further procedural details are not necessary.

And yet the midrash continues to provide further procedural details, ones which stress the agency and voice of the human participants. It is as though having achieved the perfect procedure, such as the one cutting the cake choosing last, the scenario’s description would extend to hearing from the other cake eaters. Do you like your piece? Does it look the same as the others? Are you sure? Would you be willing to sign a document to attest to that fact? In the Rawlsian scheme of perfect procedural justice, such measures are entirely redundant.

In fact, it seems likely that Part B of the midrash presents a different scenario entirely, a different understanding of justice from Part A. If Part A depicts a measure of substantive justice so perfect that the procedure is hardly relevant other than in that it assures the perfect outcome (perfect procedural justice), Part B depicts a *procedure* so perfect that the outcome is hardly relevant (pure procedural justice).

In shifting from perfect to pure procedural justice, the midrash does so completely. The first point one notes in this passage is God’s complete absence from this courtroom scenario. The process of eternal judgment seems to rely on the sole agency of the deceased person (the defendant) and his deeds (the

witnesses). The deeds are animated and anthropomorphized, such that they could themselves testify to the entirety of the person's life. Then, in a departure from typical rabbinic trial procedure, these deeds actually ask for confirmation of their veracity from the defendant him or herself. Because of the idealized setting of the divine courtroom, the deeds are perfectly transparent. Rather than having a (separate) witness testify to events (deeds), the deeds themselves are presented as witnesses to do away with one step in the chain of evidence. The defendant thus freely (with apparently no coercion) not only acknowledges them, but is willing to put ink to paper and sign his name to it. Finally, we witness an echo of the rabbinic capital trial outlined above (the one in which the family greets the judges *as if to say*, 'you have judged a judgment of truth'). Here, the defendant himself, having heard his eternal verdict, is able to utter these words: "Well was I judged." In this scenario, both the judge and the judgment are elided. It is as though the process itself has seamlessly resulted in justice; as though the defendant him or herself, and the witnesses, have acted in ways that have effected a particular outcome, which is acknowledged to be fair. It resembles Rawls' gambling scenario, and closely approximates pure procedural justice.

That the image of God as supreme Judge is neglected here is even more striking considering the prooftexts the midrash employs. The first verse from Job comes from Elihu's final speech in which he conjures up the Zeus-like majesty of God, powerful and remote, controlling the rain, snow and lightning:

See, God is beyond reach in His power; / Who governs like Him? / Who ever reproached Him for His conduct? . . . / See, God is greater than we can know; . . . / The skies rain; / They pour down on all mankind. / Can one, indeed, contemplate the expanse of clouds, / The thunderings from His pavilion? / See, He spreads His lightning over it; / It fills the bed of the sea . . . / Just listen to the noise of His rumbling, / To the sound that comes out of His mouth. / He lets it loose beneath the entire heavens— / His lightning, to the ends of the earth. / After it, He lets out a roar; . . . / His mighty downpour of rain, / *Is as a sign on every man's hand, / That all men may know His doings.* (Job 36:22–37:7)

It is this last verse that the rabbinic midrash re-reads and literally reverses, turning God's unfettered control of the cosmos into man having a significant place before God. The midrash reads the prefix *be* in a standard, though acontextual, way, as an instrumental prefix—thus, "every man shall sign *by* hand." It then views the pronoun "his"—which contextually points to God—as referring to "every man," producing the phrase, "every man will know his [own]

deeds." Hence, the verse is rendered: "Every man shall sign by hand, so that he shall know his deeds."

The verse in Psalms is re-interpreted similarly by the rabbis. Psalm 51 casts God as supreme judge before whom the psalmist must beg for mercy and salvation.

Have mercy upon me, O God, as befits Your faithfulness; in keeping with Your abundant compassion, blot out my transgressions. Wash me thoroughly of my iniquity, and purify me of my sin . . . Against You alone have I sinned, and done what is evil in Your sight; so *You are just in Your sentence, and right in Your judgment.* (Ps 51:3–6)

In the psalm, God has the final say, and the human being has no standing; he is but a supplicant. But the rabbis re-read a pronoun in this final verse found in the word "בְּדִבְרְךָ," converting the phrase "You [God] are just in Your [God's] words/sentence" into "you [human being] will justify [it] with your words." Once again, the rabbis literally reverse the meaning of the verse, insisting on giving agency to the human being rather than God: here, he or she is given the power to certify and assent to a judgment that is, in the psalm, divine and unilateral.

Indeed, the toppling of God as Judge with ultimate and unchecked authority flies in the face not only of these prooftexts, but of the Song of Moses, the Deuteronomic passage on which this pericope comments. If the Song has one consistent theme, it is that nothing happens outside of God's oversight. After a particularly vivid description of Israel's violent destruction, the Song unequivocally asserts: "Were they wise, they would think upon this, / Gain insight into their future: / 'How could one have routed a thousand, / Or two put ten thousand to flight, / Unless their Rock had sold them out, / YHWH had given them up?' " (Deut 32:29–30). Israel's defeat is orchestrated by God, not invading armies. Following that, Israel's restoration at the end of the Song comes about by God's eventual mercy upon, and salvation of, Israel; and even this newfound compassion is not prompted by Israel, by prayers or by offerings, but is rather attributed entirely to God's own fiat.²¹ God is moved to save (or vindicate) his people to some extent out of pathos for his suffering people, but for the most part, to vindicate his *own* might and power before his enemies: "See, then, that I, I am He; There is no god beside Me. I deal death and give life; I wounded and I will heal: None can deliver from My hand" (Deut 32:39). Divine power,

²¹ See, for example, R. D. Nelson, *Deuteronomy: A Commentary* (OTL; Louisville: Westminster John Knox, 2002), 375.

presented at its apex in the Song of Moses, is progressively diminished in this midrash. If Part A presents God as a reward-and-punishment bean counter, following a perfect process that leaves God with no true executive authority, Part B removes God entirely from the text and the narrative, allowing process to run according to its own rules without ever invoking God directly.

As the midrash continues, it presents two different scenarios in which God is justified even though the outcomes look patently unjust.²² But when divine justice is understood as pure procedural justice, then a theodicy is posited in acknowledging that the process has been fair, even if the outcome is not to our liking. But in doing so, such a theodicy also systematically reduces the grandeur of God as Judge and begins to show no acknowledgment of—or reverence for—God’s juridical powers (or perhaps powers more generally). In Part B of the midrash, God’s role is not simply reduced; God is not even mentioned. We are given courtroom without a judge, a cosmos without a divine adjudicator.

4 The Divine Courtroom and the Fate of Israel: The Eternal Cosmic Trial

Another midrash from *Sifre Deuteronomy*—one that comments on the introduction to the Song of Moses—explores further the idea of a divine courtroom that operates according to pure procedural justice, with no adjudication

22 They read:

Another interpretation: *The Rock, His work is perfect*—When they apprehended R. Haninah ben Teradion, he was condemned to be burned together with his Torah Scroll. When he was told of it, he recited this verse, *The Rock, His work is perfect*. When his wife was told, “Your husband has been condemned to be burned, and you to be executed,” she recited the verse, *A God of faithfulness and without iniquity*. And when his daughter was told, “Your father has been condemned to be burned, your mother to be executed, and you yourself to be assigned to hard labor,” she recited the verse, *Great in counsel, and mighty in work, whose eyes are open [upon all the ways of the sons of men, to give everyone according to his ways]* (Jer 32:19). Rabbi said: How great were these righteous people, in that at the time of their trouble they invoked three verses justifying [God’s] judgment, similar to which there is nothing else in all of Scripture. The three directed their hearts and justified God’s judgment.

Another interpretation: *The Rock, His work is perfect*—When Moses descended from Mt. Sinai, all Israel gathered together around him and said to him, “Our master Moses, what is the measure [*middah*] of judgment on high?” He said to them, “I cannot tell you that He justifies the innocent and punishes the guilty but even when He reverses the matter, *a God of faithfulness and without iniquity*.”

needed. As much space as it devotes to affirming the procedural fairness of divine justice—this time, on a national scale—this midrash also reveals its limitations as a theodicy, as a model of piety, and as a way of understanding Israel's place in cosmic history.

- A. *Give ear, O heavens, and let me speak.* R. Meir said: When Israel were blameless they bore witness against themselves, as it is said, *And Joshua said to the people, 'You are witnesses against yourselves'* (Josh 24:22). But they became corrupt in relation to themselves, as it is said, *Ephraim surrounds me with lies, and the house of Israel with deceit* (Hos 12:1). He called the Tribes of Judah and Benjamin to witness against them, as it is said, *And now inhabitants of Jerusalem and men of Judah, judge between me and my vineyard, what more could have been done to my vineyard?* (Isa 5:3–4). But the Tribe of Judah became corrupt, as it is said, *Judah acted treacherously* (Mal 2:11). He called the prophets to witness against them, as it is said, *The LORD forewarned Israel and Judah by the hand of every prophet and seer* (2 Kgs 17:13). But they became corrupt in relation to the prophets, as it is said, *They mocked the messengers of God* (2 Chr 36:16). He called the heavens to witness against them, as it is said, *I call heaven and earth to witness against you today* (Deut 4:26). But they became corrupt in relation to the heavens as it is said, *Do you not see what they do . . . the children gather wood and the fathers light the fire [. . . to the Queen of Heaven]* (Jer 7:17–19). . . .²³ He called the fish to witness against them, as it is said, *Or speak to the earth and it shall teach [. . . and the fish of the sea will declare to you]* (Job 12:8). But they became corrupt in relation to the fish, as it is said, *And made man like the fish of the sea* (Hab 1:14). He called the ant to witness against them, as it is said, *Go to the ant, sluggard; [Study its ways and learn.] Without leaders . . . it lays up its bread in the summer* (Prov 6:6–8). R. Simeon b. Elazar says: How lowly is such a person who has to learn from an ant. Had he learned and acted accordingly he would have been lowly enough. But needing to learn from an ant, he did not even learn.

...

- D. In the future the congregation of Israel will stand in judgment before God, saying to Him: Master of the universe, I do not know

23 The excised text, for the sake of brevity, continues the long line of creation that becomes 'corrupted' as witnesses by Israel.

at first who rebuffed whom, and who changed his attitude toward whom—did Israel rebuff God, or did God change His attitude toward Israel? But when Scripture says, *And the heavens declare His righteousness* (Ps 50:6), it becomes obvious that Israel has rebuffed God, whereas God did not change His attitude toward Israel, as it is said, *For I the Lord change not* (Mal 3:6) . . .

- E. Another interpretation . . . : Moses called two witnesses against Israel which would last for all eternity, as it is said, *I call heaven and earth to witness against you this day* (Deut 30:19). But the Holy One, blessed be He, called the song to testify against them, as it is said, *Now therefore write this song for you . . . [in order that this song may be My witness against the people of Israel]* (Deut 31:19). We do not know whose testimony prevails, that of the Holy One, blessed be He, or that of Moses. When Scripture says, *This song shall testify before them as a witness* (Deut 31:21), it indicates that the testimony of the Holy One, blessed be He, validates the testimony of Moses, not that the testimony of Moses validates the testimony of the Holy One, blessed be He. Why then did Moses call two witnesses against Israel that will last for all eternity? Because he said, “I am but flesh and blood—tomorrow I will die. What if Israel will wish to say, ‘We did not receive the Torah’? Who will refute them?” Therefore he called two witnesses which would exist for all eternity.

The Holy One, blessed be He, called the song to testify against them, saying, “The song will testify against them from below, and I from above.” Whence do we learn that God is called a witness? From the verses, *And I will come near to you to judgment, and I will be a swift witness* (Mal 3:5), *But I am He that knows, and am witness, says the Lord* (Jer 29:23), and *And let the Lord God be witness against you, the Lord from His holy Temple* (Mic 1:2).²⁴

In these midrashim, the divine courtroom is not the place of an individual’s judgment in the afterlife, but the place of cosmic judgment on Israel’s sinfulness (which is actually more closely aligned with the tone of the Song in Moses

²⁴ *Pisqa* 306 is extremely long, and due to space restrictions, I could neither quote nor explicate it in its entirety here. I intend to discuss five passages from the *pisqa*; as such, I have labeled these three A, D, and E—the other two passages which will be discussed below are labeled B and C to provide a rough sense of where these passages appear in the *pisqa* as a whole.

in Deuteronomy). While each of the scenarios presented here is unique, they all have two features in common: (1) an emphasis on witness testimony and (2) the presentation of the fate of Israel through the metaphor of the divine courtroom, with an emphasis on courtroom procedure.²⁵

In Part A, the larger moral message of the midrash is stated quite clearly at the end—that Israel has corrupted all of creation, and that the lowly ant stands in a morally superior position to her. It relates this message, however, through a meticulous—if not nitpicky—adherence to the rules of courtroom procedure, making sure that more than one witness stands to testify against Israel and thus establish her guilt. Once eyewitnesses are understood to be co-conspirators, they are no longer above reproach and therefore cannot be considered valid witnesses. And yet even as witnesses for the prosecution keep being corrupted, other witnesses keep coming forward, such that Israel is never let off the hook. The midrash focuses entirely on the qualification and disqualification of witnesses, a process which is normally thought of as a means to an end; here there is resounding silence regarding the eventual verdict. Indeed, the very fact that the witnesses are cast as those from whom Israel is meant to learn is a sleight of hand which allows the judgment to be endlessly deferred. Does God pronounce judgment in this scenario? Or is “judgment” simply a predetermined outcome on the basis of the evidence: the cards that are dealt, the hands that are played? Again, the midrash depicts a scenario of pure procedural justice, in which the question of the result is fully subordinated to the fairness of the process.

The other midrashim quoted above continue that trajectory, and push it even farther. Part D describes a scenario in which a legitimate question about the justice of the status quo is raised: Israel feels abandoned by God—typically a suggestion of a perceived cosmic injustice, indeed the great tragedies of Jewish history. Israel in this midrash is perhaps rightfully angry, or confused. They ask, with apparent humility, whether God has rejected them. But rather than cast this question in a scene of prayer and supplication (where such questions come up with frequency) or as protest literature, the midrash here envisages it in the setting of the divine courtroom. The question, then, appears less as a self-effacing entreaty, an angry outburst, or a theodical meditation, and more as the obfuscating words of a slippery defendant trying to wriggle out of

25 While discussing witnessing in a broader sense here than literal eye witnesses in a real court, I do not believe that the idea of witnessing or testimony can be fully divorced from their legal contexts in the ancient Jewish world, as it has been in recent decades. See A. A. Trites, *The New Testament Concept of Witness* (New York: Cambridge University Press, 2004).

his or her guilt. Indeed, it reminds the reader of another rabbinic scenario, a comment on Cain's self-defense before God:

This may be compared to a prefect who was walking in the middle of the road, and found a man slain and another standing over him. 'Who killed him?' he demanded. 'I will ask you [that question] instead of your asking me,' rejoined the other. (*Gen. Rab.* 22.9)²⁶

The midrash here presents a situation in which it is patently obvious who is guilty of murder, and who is the innocent passer-by (in parallel to the confrontation between God and Cain). But the offender, much like Cain, tries to deny responsibility. Whereas in the story in Genesis Cain denies knowledge of the murder altogether, the midrash reads his denial through a procedural lens: in a courtroom, all we have is one man's word against another. Israel's questioning God's remoteness appears here, in a juridical context, to embody a similar sense of denial of guilt or responsibility. When Israel is put on the defensive, she attempts to shift the blame. However, Israel is not lucky enough to get away with murder on a technicality. "The heavens declare his righteousness," proclaims the Psalm; and the heavens, in their plurality, are valid witnesses.

In this midrash, then, God is not a Judge, meting out punishment to those that stray from the covenant; God is instead seen to be in the same position as the accused, needing his own witnesses to exonerate himself. The divine courtroom operates according to justice, but no judge or judgment is necessary—justice is still understood as pure procedural justice in the Rawlsian scheme, and all parties appear to get a fair hearing.

The final midrash—which is, in fact, the last midrash of the *pisqa*—continues the same trajectory, demoting God from the position of judge and allowing the pre-determined processes of legal proceedings to operate on their own accord. Both Moses and God are concerned with calling witnesses against Israel, to testify that Israel both received the Torah and transgressed it. God's power as judge and ruler is once again, here, subordinated to correct procedure. Both God and Moses are calling witnesses, leaving it unclear who is running the court. And here, God is also called as a witness, and several proof-texts from the prophets are brought to confirm God's role as eternal witness against Israel. As such, the idea is not new. But in each case, we find the notion that God comes not only to witness, but to *judge and punish*: "I come near

26 A (likely) earlier parallel to this midrash appears in *Tosefta Sanhedrin*, but here the perpetrator never speaks, as Simeon b. Shetaḥ recognizes the procedural dilemma he is in immediately. See *t. Sanh.* 8:3.

to you in judgment" (Mal 3:5); "I am going to deliver them into the hand of King Nebuchadrezzar of Babylon" (Jer 29:21); "I will make Samaria a heap in the open country" (Mic 1:6). In our midrash, no similar punitive activities are predicted; indeed, God is imagined to go on witnessing "for all eternity." And indeed, in deference to proper courtroom procedure, God must not be allowed to be a single, inconsequential witness. A second witness is thus located in the Song, which stands in perhaps for the Torah itself. Thus Israel is imagined as locked in a perpetual trial with God, a verdict eternally deferred to the point of irrelevancy. The perfect or imperfect procedural justice of the criminal trial has been converted into the pure procedural justice of the game, and the world and God are judged to be fair because of their adherence to the rules; Israel's dismal future is attributed to the conviction that she has played badly, and is consistently drawing a losing hand.

A midrash that depicts the eschatological future imagines a way out of this procedural deadlock, but, perhaps surprisingly, the midrash is placed not as the culmination of the *pisqa* but rather near its beginning; while it suggests, then, a plausible future for Israel, it is not necessarily the ultimate one:

- B. In the [eschatological] future the congregation of Israel will say before the Holy One, blessed be He: "Master of the universe, behold my witnesses still exist," as it is said, *I call heaven and earth to witness against you this day* (Deut 30:19). God answers her: "Behold I am causing them to pass away" as it is said, *For I am creating new heavens and a new earth* (Isa 65:17). She says before Him, "Master of the universe, behold I see the places [in relation to which] I became corrupt and was ashamed," as it is said, *See your way in the valley, [know what you have done]* (Jer 2:23). He says to her: "Behold I am causing them to pass away," as it is said, *Every valley will be lifted up* (Isa 40:4). She says before Him: "Master of the universe, behold my name still exists." He says to her: "Behold I will cause it to pass away," as it says, *I will call you by a new name* (Isa 40:4). She says before Him: "Master of the universe, behold your name is [still] attached to the names of the Ba'als." He says to her: "Behold I will cause it to pass away," as it is said, *I will remove the names of the Ba'als* (Hos 2:19). She said before Him: "Even so, members of my household will still mention it." He says to her: *And they shall no longer be mentioned by their name* (Hos 2:19).

In the eschatological future, as this midrash envisions it, God *still* does not pronounce a sentence; instead, He fixes Israel's procedural disadvantage so that the rules of the trial point in Israel's favor. When God uses his immense power

over the cosmos to literally re-create the universe, to create a “new heaven and a new earth,” he does so because of his apparent *adherence* to trial procedure, rather than because the trial has finally come to an end. Does God not have the power simply to *ignore these witnesses* and pronounce His acquittal? *To overrule them?* It appears that he does not, or that even if he does, he is somehow bound nonetheless to procedural rules. While God’s causing these witnesses to “pass away” is an extralegal act, it is done to achieve a legal aim: to exonerate Israel according to correct trial procedure; to get Israel off the hook on a technicality. Even in the midrash’s depiction of the End Times, the outcome, the verdict, is muted—redemption (or acquittal) does not actually take place. Rather, the hopeful note that is struck is the hasty and miraculous disappearance of witnesses, the idea that the deck has now, finally, been stacked in Israel’s favor.

As Steven Fraade points out on his interpretation of this *pisqa*, “juxtaposed to [Israel’s] past history of decline . . . is a projected future of covenantal rehabilitation. But in the middle, that is, in the present, there remains a rather significant temporal *gap*: . . . [there is a heightened awareness] of the present hiatus between the two [points in time].”²⁷ While Fraade’s insightful reading looks to the last midrash in the *pisqa* to position Torah itself as the mediator of this ‘time in between,’ I would argue that rather than a gap, we find an ongoing trial. Despite the rabbinic (and Deuteronomic) understanding that Israel has flagrantly transgressed the covenant, corrupting the earth and all the inhabitants therein, and despite the tannaitic and prophetic idea that in the messianic age the universe will literally be recreated, for the rabbis of these midrashim, the only constant is that the legal structure of a trial persists. God is positioned as both a keeper and adherent of cosmic procedural laws, which allow the verdict of history to be influenced one way or another, yet never decisively reached.

I would suggest that viewing history and eschatology as an endless trial, even one that is not going in your favor, had certain resonance for the early rabbis as an explanatory cosmology. Unlike the deity in the Song of Moses, whose anger and jealousy lead him to make swift changes in Israel’s fate on a whim, the God of the rabbis acts in legible ways, and history proceeds according to recognizable rules. The courtroom may indeed be a place of safety, a place where one can articulate grievances, argue on one’s own behalf, and attempt to redress wrongs without fear of reprisal. Surely, the eternal trial the rabbis envisage here provides a sense of security in its very legibility; unlike Job, they do not imagine a God who is inscrutable and inexplicably vindictive.

27 S. D. Fraade, *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy* (Albany: State University of New York Press, 1991), 131–32.

And, indeed, as Newsom opines about Job's deepest desire for a fair hearing, the divine courtroom of the midrash is one in which the power differential between God and human is put aside: it is not a court in which God judges, but rather a court in which God participates. God's ways are made readable through the discourse of law, and specifically through the discourse of procedural justice. Israel is assured of agency and meaningful participation in covenantal history, regardless of the outcome.

But the limitations of this relational model between God and Israel become all too palpable in this *pisqa*. Despite the hopeful notes of the midrash that are set in the eschatological age, the *pisqa* as a whole is bleak and pessimistic. While the God of the rabbinic imagination who adheres to due process may not be capricious or vindictive, He is undoubtedly distant; because while the trial metaphor provides safety and legibility, it emerges, much as actual courtrooms, as cold and impersonal. And thus there are several midrashim that begin to articulate an alternative discourse, much as Job began to articulate a legal metaphor as an alternative to traditional pious modes of supplication and humility. Another early midrash in the *pisqa*, appearing immediately after Part B above, is almost jarring as it shifts the roles of the characters:

- C. And, again in the future, she [Israel] will say before Him: "Master of the universe, you once wrote, *If a man divorces his wife [and she leaves him and marries another man, can he ever go back to her?]*" (Jer 3:1). He says to her: "I only wrote *man*. And is it not said, *For I am God and not man* (Hos 11:9)? And are you divorced from me, house of Israel? For has it not already been written, *Thus says the Lord: Where is the bill or divorce of your mother [whom I dismissed]?*" (Isa 50:1)."

In this midrash, Israel again appears before God, and given the context, the reader of the *Sifre* immediately imagines a courtroom setting. But suddenly, abruptly, we realize that the midrash has dispensed with all of the witnesses; there are no other actors, and God and Israel confront each other face to face. Rather than relating to each other as defendant and Judge, or defendant and witness, or defendant and accuser, Israel and God now appear to be bound together by marriage—a personal, familial relationship. Legal discourse is not discarded in this passage; indeed, divorce law is the explicit subject of this passage. But we are nonetheless in a different area of law—family law—and we see God and Israel eternally locked together not as courtroom adversaries but feuding marriage partners.

Formally, the midrash reaches this interpretation via Hosea. The eschatological section of the midrash began (Part B) by relying on the powerful and universal God of Isaiah 40, but it then shifts to Hosea for its last two proof-texts: “She says before Him: ‘Master of the universe, behold your name is [still] attached to the names of the Ba’als.’ He says to her: ‘Behold I will cause it to pass away,’ as it is said, *I will remove the names of the Ba’als* (Hos 2:19). She said before Him: ‘Even so, members of my household will still mention it.’ He says to her: *And they shall no longer be mentioned by their name* (Hos 2:19).” The rabbinic reader/hearer will undoubtedly recall the context in Hosea from which these verses are extracted: the chapter that begins “Rebuke your mother, rebuke her—/ For she is not My wife / And I am not her husband” (2:4) and ends with, a mere two verses after our proof-text, “And I will betroth you forever: I will betroth you with righteousness and justice, And with goodness and mercy” (2:21). And thus, our midrash has been prodded by the provocative and moving personal relationship depicted by Hosea into imagining God and Israel no longer as participants in litigation, but bound by an eternal marital relationship. This leads the midrash, still focused on legal normativity, to ask its next question: “Master of the universe, you once wrote, *If a man divorces his wife [and she leaves him and marries another man, can he ever go back to her?]*” The response this time is not to tinker with the legal process, or to bring more legal precedent or universalizable counter-arguments; here, rather, the midrash envisages God demanding that Israel look to the particularities of their relationship in order to understand why this law does not apply. On the one hand, God is God, not man—this is not a general question of divorce, but an entirely unique one. Second, God responds to Israel: we are not even divorced! A creative reading of Isaiah 50:1 again converts a verse about God’s utter transcendence over human and natural law to a vision of God bounded by the law and tethered to Israel: in this case, there was never actually a bill of divorce, even though one party was sent away, and so a legal technicality is introduced in which we are led to understand that God and Israel were never, actually, legally divorced.

In this midrash, law is not invoked as a discourse of safety amid the treacherous waters of the divine-human relationship. Instead, law here is the impediment; when God draws Israel near in the messianic age after a long epoch of estrangement, the law arises to suggest that such a moment is impossible. Even in turning to an image of a close, affective relationship, as opposed to a juridical one, to model the relationship between Israel and God, the midrash stumbles over the generalizable predictability that the law requires. In other words, if we want a world in which the deity cannot ruthlessly persecute one man for personal reasons without the law intervening, we also must accept that this

same deity cannot favor one man, or one people, without the law intervening. And so the midrash does not overturn the law or legal discourse but rather looks to the particular details of *this case* and *these parties* to overcome legal obstacles toward a redemptive reunion.

An understanding of the divine order of the world based on pure procedural justice can be comforting and quite literally empowering, as humans are placed on fair and equal footing with their God, who sets aside overwhelming power to allow space for human voices and argumentation. Much like Rawls' polity, humans are allowed to exercise free choice, and the consequences of those decisions are theirs to bear. But the fact that there is no capacity for assessing the outcomes as just or unjust based on independent criteria, *despite* poor choices, or *despite* assurances of a fair process, can become oppressive. The idea of divine corruption or injustice for the tannaitic rabbis, in legal, covenantal terms, is anathema²⁸—and so when the rabbis approach the outer limits of the terms of procedural justice, they swiftly change the model and the metaphor, to a contradictory if complementary one. In this model, Israel and God are locked in a personal, affective relationship, albeit one mediated by law. Procedural justice becomes less pure, and more imperfect; other measures of justice, those that are grounded in care and human particularities, come to the fore. And it is in these glimmers of a different relational model that the rabbis begin to forge a way out of their procedural stalemate.

28 On this point, see D. C. Kraemer, *Responses to Suffering in Classical Rabbinic Literature* (New York: Oxford University Press, 1995); or Dov Weiss' article in this volume.

Rabbi Nissim of Girona on the Heavenly Court, Truth, and Justice

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In her book on the divine courtroom, Meira Z. Kensky shows that in ancient Hebrew, Greek, and Roman literature, stories about the divine courtroom often served explicitly or implicitly to call God's justice into question, to try God.¹ God is Judge in his own courtroom, but is also judged. The divine courtroom was thus a place of skepticism regarding absolutes. God's decisions are not taken for granted as true or just, but are doubted and challenged. "Shall not the Judge of the whole earth do justice?!" (Gen 18:25), cried Abraham, presuming, it would seem, that the Judge of the whole earth was indeed capable of *not* doing justice.

In addition to this existential or Berdichevian use of the divine courtroom, there is also a philosophic or epistemological use. Presuming that no human being can ever know objective ontological truth, one is sometimes led to speak theoretically or figuratively about an omniscient God who does know it. God's judgment thus represents objective ontological truth and absolute justice. Famous examples of such a usage are found in Maimonides and Kant.

Defining "repentance" in his *Mishneh Torah*, *Hilkhot Teshuvah* 2:2, Maimonides writes as follows. "What is repentance? It is when the sinner truly forsakes his sin . . . and He Who Knows the Secret Things [*yodea' ta'alumot*] testifies concerning him that he will never repeat that sin again."² There is a clear criterion for repentance and it is the forsaking of the sin. However, how can a human judge know for sure that a guilty individual has forsaken his or her sin? There is, according to Maimonides, an objective truth about whether one has forsaken one's sin, but it is inaccessible to other human beings and indeed even the one who has sinned cannot always be certain about it. Thus, in referring to

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1 Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (WUNT 2/289; Tübingen: Mohr Siebeck, 2010).

2 Maimonides, *The Book of Knowledge* (ed. and trans. M. Hyamson; Jerusalem: Boys Town, 1962), p. 82b (translation modified).

that hidden objective truth, Maimonides has recourse to God, the Knower of Secret Things.³

Similarly, Kant, in his *Metaphysics of Morals*, Doctrine of Virtue, I, 2, 1, 13, discusses the importance of the conscience in judging the morality of one's acts. The work of the conscience, according to him, is "like adjudicating a case before a court." However, since the conscience is itself part of the accused, it cannot fairly be thought of as the judge in this court. Thus, one must conceive of an external Other as the judge. "This other may be an actual person or . . . an ideal person." If an ideal person, it should best be conceived as "a Scrutinizer of Hearts" (*ein Herzenstundiger*), that is, God. God, or more precisely, the Idea of God, is the "just Judge."⁴

In these texts of Maimonides and Kant, God or the Idea of God is introduced as the omniscient Knower of Secrets, and thus the absolute Judge of one's true intentions. Both philosophers presume that there is an objective answer regarding the question of one's true intentions, even though this answer is difficult to ascertain.

Although a Maimonidean positivist in his legal theory, Rabbi Nissim ben Reuben of Girona (c. 1310–76), known by the acronym Ran, believed, like Judah Halevi and Nahmanides, that the law concerns itself with objective ontological truth.⁵ He believed, that is, that there is always an objectively true or just verdict, although he also held that that verdict as such has no legal validity. What is legally binding is the ruling of the judges in accordance with their own fallible understanding, whether or not their ruling corresponds to ontological truth. Thus, the question whether a particular food is kosher or not has a definite ontological answer, but that answer is irrelevant to the law; for what

3 Needless to say, God's testimony is valid only in the sphere of personal morality and not in the earthly courtroom. Thus, in his *Commentary on the Mishnah, Sanhedrin 3:3* (Arabic text and Hebrew trans., Rabbi Joseph Qafih; Jerusalem: Mosad ha-Rav Kook, 1968), p. 160, Maimonides rules that transgressors who had been disqualified to give testimony, e.g., dice players, usurers, pigeon-flyers, or traffickers in *shevi'it*, are considered qualified to give testimony if they repent and "witnesses testify" that they had the opportunity to repeat their past transgressions "but did not do so because of repentance." Obviously, these witnesses, who, unlike God, have no knowledge of "secret things," cannot be certain that the transgressors have truly repented in their souls, but their testimony regarding their penitential behavior is sufficient for the earthly courtroom.

4 Kant, *The Metaphysics of Morals* (trans. M. Gregor; Cambridge: Cambridge University Press, 1991), 233–35; cf. *Kants Werke* (ed. P. Natorp; Berlin: Walter de Gruyter, 1907), vi, pp. 338–440.

5 See my "Rabbi Nissim of Girona's Philosophy of Halakhah," in *Iyyunim Hādashim be-Filosofiah shel ha-Halakhah* (ed. A. Ravitzky and A. Rosenak; Jerusalem: Magnes University Press, 2008), 171–80 (Hebrew).

determines the permissibility of the food is the ruling of the judges in accordance with their own fallible understanding. Similarly, the innocence or guilt of an individual is determined by the judges, whether or not their ruling corresponds to ontological truth or justice.

In Ran's discussions of the Heavenly Court or Heavenly Academy (*metivta de-raqi'a*), God represents objective truth and justice. Human beings, Ran explains, do not always agree with God's rulings, and sometimes rule contrary to them, even though they know that God's rulings represent absolute truth and justice.

To illustrate Ran's views on this subject, I shall discuss his analysis of two texts: (1) the *aggadah*, cited in *b. Bava Meši'a* 86a, about Rabbah bar Naḥmani and the Heavenly Academy; (2) the story, related in Genesis 18:16-33, about Abraham's defense of Sodom and Gomorrah. The first text concerns ritual law, the second concerns ethics.

1 Rabbah bar Naḥmani and the Heavenly Academy

As related in *b. Bava Meši'a* 86a, Rabbah bar Naḥmani was accused on trumped up charges of anti-government activities. He was successful in escaping the police, but was executed by a decree of the Heavenly Academy, an ethereal court composed of deceased talmudic scholars. It seems that there had been a debate on high regarding the laws of leprosy. According to Leviticus 13:1-3, if a bright spot appears prior to a white hair, the patient is unclean; but if the white hair preceded the bright spot, he or she is clean. Now, the dispute that arose on high involved the case in which it was not certain which had appeared first. Regarding such a case, God ruled the patient is clean, but the entire Heavenly Academy ruled that he or she is unclean. In order to resolve the dispute, it was decided to summon Rabbah to the Heavenly Academy, since he was an expert on such laws. The Angel of Death was sent to kill him and escort him to the Heavenly Academy, but he had no more luck than the police. He was unable to apprehend him, since he did not break off from his studies of the Law even for a moment, and such study protects one from death. When a wind caused a rustling in the bushes, Rabbah mistakenly thought the police were outside and broke off his studies, saying, "Better die than to be captured by the government." The Angel of Death immediately seized him. He was seized while he was contemplating the case of the uncertain leper, and his last words were, "Clean, clean!" He thus agreed with God against the Heavenly Academy. It should be observed that the opinion attributed in this talmudic legend to God and Rabbah is the minority opinion of Rabbi Joshua ben Ḥananiah recorded

in the Mishnah, *Nega'im* 4:11, while that attributed to the Heavenly Academy is the majority opinion recorded there. Maimonides ruled in accordance with the majority opinion of the Mishnah, and against God, Rabbi Joshua, and Rabbah (*Mishneh Torah, Hilkhhot Tum'at Sara'at* 2:9).

Ran discusses this legend in two different places: in his Fifth Homily ("Homily on Prophecy"), second version, and in his Seventh Homily ("Homily on Talmudic Study"). He writes as follows:

There are here enormous questions. . . . How could there be a doubt with regard to that which [the members of the Heavenly Academy] learned from God? Rather, this *aggadah* is to be interpreted. . . . For although they knew that in the case of doubt the individual is clean according to the Truth [*'al derekh ha-'emet*], they nonetheless ruled "unclean," since the decision of the Law had been given to them in their lifetime, and their reason had concluded "unclean." It was right that the ruling should be "unclean," even though it is contrary to the Truth, for this is what human reason had concluded. As for the others [e.g., Rabbi Joshua and Rabbah], even though they affirm the Truth, it is not right, according to the ways of the Law, that the ruling be so. Similarly, the opponents of Rabbi Eliezer [ben Hyrkanos] did not rule "clean," even though a Voice came down from Heaven, saying that the law is in accordance with his view. They had no doubt that the Voice was sent by God, just as [the members of the Heavenly Academy] had no doubt [that God had ruled "clean" regarding the disputed law of leprosy], but nonetheless they proclaimed, "It is not in heaven!" [Deut 30:12] [*b. B. Meši'a* 59b]. Consequently, [the members of the Heavenly Academy] said, "Who shall decide? Let Rabbah bar Naḥmani decide!" His decision was not intended to determine the Truth, for they had no doubt regarding it. . . . Rather, his decision meant that human reason, in accordance with the Law and the principles of its exposition, concludes "clean." Those who ruled "unclean" did so because of the deficiency of their intellects . . . or because of their laxity in the study of the Law during their lifetime. Now, since those who ruled "unclean" were more numerous than Rabbah bar Naḥmani, who ruled "clean," even though he was more in agreement with the Truth . . . , the majority will not rule "clean" in accordance with the view of one individual. Thus, the Law commanded that the decision of the majority is binding [*hakhra'at hamerubbim takhri'a*], and the individual is commanded to abide by their consensus, even though he knows that they do not agree with the Truth, for this is what God commanded, saying "Thou shalt not turn aside from

the sentence which they shall declare unto thee, to the right nor to the left" [Deut 17:11].⁶

According to Ran's interpretation, God's opinion (= "clean") represents ontological or objective Truth; Rabbah's opinion (= "clean") represents the best efforts of human reason; and the Heavenly Academy's opinion (= "unclean") represents the law, which was the result of inadequate intellectual ability or inadequate study, but which, as the majority opinion, is nonetheless binding. The identity of the opinions of God and Rabbah shows that in Ran's view the law is not by necessity irrational. If the judges have intellectual skill and study assiduously, they, like Rabbah, will decide the law in accordance with ontological or objective Truth. However, since they are human, they do not always do so. Ran's view is clear: whether or not the majority rules in accordance with the Truth, whatever they rule is the law. It must be emphasized that the "majority" in question is the majority of *living* scholars: the members of the Heavenly Academy had asserted their views while they were still alive. This is also true of Rabbah, who managed to exclaim "Clean, clean!" before he died.

In his philosophical discussions on the nature of law (particularly in Homily 11), Ran often concerned himself with constitutional questions; e.g., what are the powers, authority, limitations, and responsibilities of the king, the judges, or the prophets.⁷ In his present discussion of this talmudic legend about Rabbah bar Nahmani and the Heavenly Academy, he in effect seeks to clarify the constitutional status of God, and concludes *inter alia* that He has no judicial power or authority. His deliberations are purely theoretical.

2 Abraham's Defense of Sodom and Gomorrah

In his unfinished Commentary on the Pentateuch, Ran discusses Abraham's celebrated words in defense of Sodom and Gomorrah:

"And Abraham drew near [to God], and said: Wilt Thou indeed sweep away the righteous with the wicked? Peradventure there are fifty righteous within the city, wilt Thou...not forgive the place for the fifty

6 *Derashot ha-Ran* (ed. L. A. Feldman; Jerusalem: Shalem, 1974), homily 7, pp. 112–14; cf. homily 5b, pp. 86–87; 2d ed. (Jerusalem: Mosad ha-Rav Kook, 2003), pp. 254–60; cf. pp. 516–18.

7 See my "Rabbi Nissim of Girona on the Constitutional Power of the Sovereign," *Diné Israel* 29 (2012): 91*–100*.

righteous that are therein? That be far from Thee to do such a thing, to slay the righteous with the wicked, so the righteous should be as the wicked . . . Shall not the Judge of all the earth do justice?!" [Gen 18:23–25]. Abraham's statement is very strange to me, that he should say to God, may He be blessed, "Shall not the Judge of all the earth do justice?!" It would have been more proper for him to beseech Him that He forgive their sins in accordance with His attribute of Mercy. How could he say this to Him, knowing that nothing proceeds from Him but righteous judgment? If He cuts down the righteous with the wicked, He does not do so except in justice.

Therefore, I think the meaning is as follows. Inasmuch as God had told Abraham that if "they have done altogether according to the cry of it" [ibid., v. 21], He would destroy them, Abraham thought in response: It cannot be that God means this in the strict sense, for how is it possible that the righteous should be swept away with the wicked? Far be it from Him to do such a thing! He did not think it possible in any way. He spoke at exceeding length about this in order to intimate to Him that just as it is not characteristic of Him to do such a thing . . . , so it is right for him to forgive the entire place because of the righteous, for if not, then the righteous would be punished with the wicked. For even if owing to their righteousness they would have their own lives spared, how could they bear to witness the downfall of their homeland and their environs, and lose all their property. Accordingly, Abraham made his words pleasing by way of parable, saying: just as it is not right according to the attribute of Justice to kill the righteous with the wicked, so it is not right according to His attribute of Mercy to destroy the place of the righteous, even if their lives are spared.⁸

Ran presumes that God is the standard of absolute justice and always acts in accordance with righteous judgment, and he cannot imagine that Abraham would doubt that God always does justice. Ran's Abraham does not therefore demand that God do justice, but beseeches Him to act in accordance with mercy. God, as Ran explains, had intended to destroy the cities together with all their wicked inhabitants, but planned to allow the righteous to escape. Ran considers this just, but notes that it would still constitute an undeserved punishment for the righteous, who would suffer the destruction of their communities, homes, and property. Mercy for the righteous, argues Ran's Abraham, requires that their cities be spared.

8 *Perush ha-Ran 'al ha-Torah* (ed. L. A. Feldman; Jerusalem: Shalem, 1968), 238–39.

In the midrash (*Gen. Rab.* 49:14), Abraham is called the “defense lawyer” (*sanegor*) of Sodom and Gomorrah, and Ran also refers to him thus.⁹ As a defense lawyer in the divine courtroom, Ran’s Abraham does not question the Judge’s justice, but begs Him to show mercy. According to Ran’s theology, it is inconceivable to question God’s Truth or Justice, but not inconceivable to question His Mercy.

3 Conclusion

Ran presents God as the absolute criterion of Truth and Justice. While he sees no possibility of arguing that God’s Truth and Justice are not Truth and Justice, he does support the right of human beings to choose different paths—for example, to rule “unclean” when the divine Truth is “clean,” and to defend the inhabitants of Sodom and Gomorrah, even though the divine Justice requires their destruction.

Nonetheless, there is a major difference between the debate in the Heavenly Academy concerning the laws of leprosy and Abraham’s conversation with God concerning Sodom and Gomorrah. In the debate in the Heavenly Academy, God is free to express His legal opinion, but it has no weight in the judicial process. In the confrontation over Sodom and Gomorrah, God is the Judge, whose decision determines the life and death of human beings. I wonder how Ran would have resolved this discrepancy. One might say simply that the debate in the Heavenly Academy concerned the Law of Moses and its jurisprudential procedures, whereas the confrontation over Sodom and Gomorrah took place before the promulgation of the Law of Moses, and, moreover, involved Gentiles, who, in any case, would not have come under its province. However, it is possible that Ran would have replied in a different way, as follows: as King of the Universe, God does not have regular judicial powers, but He does have the responsibility, in extreme situations, to intervene and to take on the mantle of Judge in order to preserve the political welfare. If this was Ran’s opinion, it would have been analogous to his view on the constitutional powers of the flesh-and-blood kings of Israel.¹⁰

9 Ibid., 243.

10 See my “Rabbi Nissim of Girona on the Constitutional Power of the Sovereign,” 92*–94*.

The Divine Courtroom Motif in the Hebrew Bible: A Holistic Approach

*Job Y. Jindo**

1 Introduction

The biblical notion of divine justice and the courtroom has been discretely examined, more often than not, as an independent theological category of its own.¹ As I see it, however, this notion is part of a complex category of biblical religion, through which biblical authors grasped the operation and meaning of the world and the self.² It is part of a royal model through which God is

* Associate Director for Academic Programs, the Tikvah Fund. An earlier version of this study, which I presented at the present conference, explored two subjects: (1) the formative significance of the notion of the divine council, i.e., how this notion gave structure to the worldview, self-understanding, and value system of biblical authors; and (2) the interpretive significance of the notion of the divine council, exemplifying how the recognition of the centrality of this notion may enhance our reading of biblical literature, using the book of Genesis as a test case. This version addresses only the first subject. I intend to present an expanded version of the second discussion separately. I thank Eli Rusyn for valuable editorial suggestions.

1 E.g., A. Gamper, *Gott als Richter in Mesopotamien und im Alten Testament: Zum Verständnis einer Gebetsbitte* (Innsbruck: Universitätsverlag Wagner, 1966); P. Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible* (trans. M. J. Smith; JSOTSup 105; Sheffield: JSOT Press, 1994). This legal motif is usually discussed in the context of prophetic legal disputation (*rib*); see, e.g., H. B. Huffmon, "The Covenant Lawsuit in the Prophets," *JBL* 79 (1959): 285–95; B. Gemser, "The *RĪB*-* or Controversy-pattern in Hebrew Mentality," in *Wisdom in Israel and in the Ancient Near East: Presented to Harold Henry Rowley by the Society for Old Testament Study in Association with the Editorial Board of Vetus Testamentum, in Celebration of His Sixty-Fifth Birthday, 24 March 1955* (ed. M. Noth and D. W. Thomas; VTSup 3; Leiden: Brill, 1965), 120–37; J. Harvey, *Le plaidoyer prophétique contre Israël après la rupture de l'alliance* (Bruges: Desclée de Brouwer, 1967); J. Limburg, "The Root רִיב and the Prophetic Lawsuit Speeches," *JBL* 88 (1969): 291–304; M. O'Rourke Boyle, "The Covenantal Lawsuit of the Prophet Amos: III 1–IV 13," *VT* 21 (1971): 338–62; K. Nielsen, *Yahweh as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib-Pattern)* (JSOTSup 9; Sheffield: Sheffield Academic Press, 1978); M. Thiessen, "The Form and Function of the Song of Moses (Deuteronomy 31:1–43)," *JBL* 123 (2004): 401–24.

2 See my book, *Biblical Metaphor Reconsidered: A Cognitive Approach to Poetic Prophecy in Jeremiah 1–24* (HSM 64; Winona Lake, Ind.: Eisenbrauns, 2010), chap. 4. There, as well as

conceived of as king, the heavenly council as his royal court, and the universe as his dominion.³ Accordingly, exegetes exploring the biblical motif of divine lawsuit and the courtroom should consider it in light of the entire complex of which that motif is a part; otherwise their analyses will fail to capture the dynamic interactions represented through the royal paradigm.⁴ Indeed, as explained below, the divine courtroom is but one of the two principal functions of the heavenly council, which is a central reference point of this paradigm.

The present discussion is descriptive in nature. It portrays the overall structure of the royal paradigm and its formative significance to a monotheistic perception of reality and life as reflected in biblical literature. As will be shown, understanding this underlying paradigm and the divine council motif as its pivot is vital not only in order to recognize the interrelation of many seemingly unrelated semantic and thematic elements that appear in biblical literature, but also as a necessary prelude for understanding the worldview and self-understanding of biblical authors.

2 The Cosmos As a Polity⁵

We as humans seek to understand the order of the world in which we live—one that is full of “enigmas” that require explanation, such as untimely death or natural calamities. Particular worldviews, along with the categorical frameworks that comprise them, can allow us to grasp meaning in life. Each worldview involves a distinct way of seeing and thinking; this, in turn, reflects unique forms of appreciation and categorization. It is within such general frameworks that individual categories, notions, and institutions of a given culture can be seen as acquiring their significance. Therefore, an adequate understanding of the general worldview of a given culture is vital in order to understand any

in some of my earlier works, I followed the convention of calling this paradigm a “royal metaphor.” As explained below, I regard this designation misleading when studying it as part of the phenomenology of biblical religion. I therefore prefer not to use the term “metaphor” for this paradigm.

3 See, e.g., F. A. Rothschild, “The Idea of God’s Kingship in Jewish Thought: *Basilemorphism* as a Root Metaphor” (D.H.L. diss., Jewish Theological Seminary of America, 1967); E. L. Greenstein, “Biblical Law,” in *Back to the Sources: Reading the Classic Jewish Texts* (ed. B. W. Holtz; New York: Summit Books, 1984), 83–103; M. Z. Brettler, *God Is King: Understanding an Israelite Metaphor* (JSOTSup 76; Sheffield: Sheffield Academic Press, 1989).

4 See Jindo, *Biblical Metaphor Reconsidered*, esp. 71–83.

5 The phrasing is based on Thorkild Jacobsen’s chapter title, *The Treasures of Darkness: A History of Mesopotamian Religion* (New Haven: Yale University Press, 1976), 75.

such cultural elements, be they internal (conceptual) or external (institutional). Biblical literature is no exception.⁶

In the ancient Near East, as has long been noted, people conceived of the complex operation of the world in terms of a polity with the heavenly assembly as the supreme authority governing all of the matters of the universe.⁷ In this regard, both Mesopotamian polytheism and biblical monotheism shared the same mode of, and model for, conceptualization: they both perceived the cosmos as a polity. The difference between the two religious systems lies in the specific political model through which they perceived the operation of the world: namely, an oligarchic versus an autocratic model. The polytheistic mind perceived a plurality of divine wills behind the operation of the world, whereas the monotheistic mind intuited the supreme and ultimate will of a single deity behind it. Each system thereby shaped and developed a distinct attitude of life and reality in light of which each of them structured their own perceptions and experiences.⁸

In the royal model of biblical cosmology, there is a systematic correspondence between two frames of reference: that of the polity and that of the cosmos. The basic correspondences of the two frames can be presented as follows:

KINGSHIP		COSMOS
king	—	God
king's dominion	—	cosmos
royal palace	—	temple, celestial or terrestrial
royal capital	—	Jerusalem
royal manor	—	Jerusalem, the land of Israel
royal garden	—	the garden of Eden

6 J. J. Finkelstein, "The West, the Bible and the Ancient Near East: Apperceptions and Categorizations [*sic.*]," *Man* 9 (1974): 591–608, esp. 591.

7 T. Jacobsen, "Mesopotamia: The Cosmos As a State," in *The Intellectual Adventure of Ancient Man: An Essay on Speculative Thought in the Ancient Near East* (ed. H. Frankfort et al.; Chicago: The University of Chicago Press, 1946), 125–84; idem, "Primitive Democracy in Ancient Mesopotamia," *JNES* 2 (1943): 159–72; repr. in *Toward the Image of Tammuz and Other Essays on Mesopotamian History and Culture* (ed. W. L. Moran; HSS 21; Cambridge, Mass.: Harvard University Press, 1970), 157–70; idem, *Treasures of Darkness*, 77–91. Consider also J. J. Finkelstein's penetrating essay, "The West, the Bible and the Ancient Near East," which has not received the attention it deserves. Overall, see J. H. Walton, *Ancient Near Eastern Thought and the Old Testament: Introducing the Conceptual World of the Hebrew Bible* (Grand Rapids: Baker Academic, 2006), and works cited there.

8 For more on this, see my *Biblical Metaphor Reconsidered*, chap. 4.

royal council	—	heavenly council
council members	—	celestial beings, prophets
king's confidants	—	Abraham, Moses, prophets
palace attendants	—	priests
palace workers	—	Levites
royal messengers	—	prophets
constituents	—	Israelites, humans, or all the creatures
taxes	—	tithes
tributes	—	cultic offerings
loyalty	—	devotion
disloyalty	—	idolatry
lese majesty	—	sacrilege/blasphemy

The relations and tensions inherent within each frame of reference correspond with one another alongside the correspondences that exist between their respective constituent elements. As the chart shows, the biblical notion of divine justice and the courtroom is part of this overarching polity model—it is one function of the heavenly council listed above. Because each correspondence (e.g., the “heavenly council” is God’s “royal council”) is organically related to the other parts as well as to the whole, every element should be examined holistically and not atomistically. Indeed, both its semantic and conceptual significance is determined in relation to other elements, as well as to the polity model as a whole.⁹

Scholars’ opinions as to the *nature* of this complex are divided. Many critics identify it as a metaphor—as a projection of a human institution to the celestial and cosmic sphere, thereby providing a way to describe and understand the working of the divine.¹⁰ Other scholars, however, object to this identification

9 People usually do not transmit new conceptual information in discourse; instead, they manipulate the conceptual system that is known by their audiences beforehand. Therefore, the exegete must clarify the conceptual information in case it is not fully articulated in the given discourse. Manipulation of this kind is replete in everyday communication, as discussed in B. Harshav, “An Outline of Integrational Semantics: An Understander’s Theory of Meaning in Context,” in *Explorations in Poetics* (Stanford, Calif.: Stanford University Press, 2006), 76–112, esp. 87. Consider also Ronald A. Simkins’ discussion of biblical literature as a product of a “high context society for high context readers” in his *Creator and Creation: Nature in the Worldview of Ancient Israel* (Peabody, Mass.: Hendrickson, 1994), 42.

10 E.g., Rothschild, “The Idea of God’s Kingship in Jewish Thought”; Brettler, *God Is King*. For a similar approach in the study of ancient Mesopotamia, see Jacobsen, “Primitive Democracy”; idem, *Treasures of Darkness*.

given that the Bible depicts God as actually reigning over Israel and the universe. While the depiction may involve metaphors, the notion itself is not a metaphor: God is literally king.¹¹

The issue at hand requires an extended taxonomical discussion, which I have presented elsewhere; therefore, I do not wish to outline it on this occasion.¹² What bears remarking, however, is that I prefer not to call this notion a metaphor when discussing the phenomenology of biblical religion. While historically the idea of divine kingship may or may not have evolved through a metaphorical projection, the idea itself seems to have become a category of its own in the world which biblical authors inhabited and that it was understood as among God's primary (and not secondary) attributes—hence not as a metaphor.¹³ If, for example, we understand it in the metaphorical sense, Gideon and Samuel's objection to the establishment of human kingship would not make sense (Judg 8:23; 1 Sam 12:12), for there would be no real conflict between the two kingships—divine and human.

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- 11 Consider, e.g., Francis Landy's remark on the biblical imagery of the divine warrior, which he may regard as a subcategory of the biblical notion of God's kingship: "YHWH throughout is a literal warrior, fighting genuine foes, no matter how metaphorically the strife is depicted"; Landy, "On Metaphor, Play and Nonsense," *Semeia* 61 (1993): 219–37, esp. 219. This remark is a reply to Brettler's article which treats the imagery of the divine warrior as a metaphor, which Brettler also regards as a subcategory, or "submetaphor" as he puts it, of God as king; see M. Z. Brettler, "Images of YHWH the Warrior in Psalms," *Semeia* 61 (1993): 135–65, esp. 137 n. 4. Consider also M. Halbertal, "God's Kingship," in *The Jewish Political Tradition* (ed. M. Walzer, M. Lorberbaum, and N. J. Zohar; New Haven: Yale University Press, 2000), 1: 128–32; M. Walzer, "Introduction," in *The Jewish Political Tradition*, 1: 109–16; idem, *In God's Shadow: Politics in the Hebrew Bible* (New Haven: Yale University Press, 2012), esp. 50–71. See also D. H. Aaron, *Biblical Ambiguities: Metaphor, Semantics, and Divine Imagery* (BRLAJ 4; Leiden: Brill, 2001), 35: "I would maintain that the expression 'God is King' was, at certain stages in Israel's history, understood literally and that precisely because of this, some passages argued for the limitations of the conceptualization of this image." While I endorse this statement, I find Aaron's overall thesis concerning what he calls "biblical ambiguities" problematic in many ways—especially, because it blurs the distinction among different categories of ambiguity (esp. between semantic fluidity and epistemic uncertainty).
 - 12 J. Jindo, "God is King: Some Pitfalls in the Identification of Metaphor." I presented this paper at the annual meeting of the Society of Biblical Literature in Baltimore on November 24, 2013. I intend to publish an extended version of this study in the near future.
 - 13 The idea of divine kingship is already present in the ancient Near East in the third millennium BCE. See, e.g., Jacobsen, *Treasures of Darkness*, chap. 3. Jacobsen assumes the notion of gods as rulers in Mesopotamian literature to be an evocative metaphor or symbol—a view which I have some reservations (see note 18 below).

However, the reason that led me not to use the term “metaphor” for this notion is primarily heuristic rather than ontological: not, or not primarily, because ontologically it may or may not be a metaphor, but because the very use of the word conditions my analysis. The term “metaphor” evokes the sense of “projected-ness” and, once applied, the *realness* of the image is instantly diminished and, eventually, the living reality of biblical religion, of which this notion is but a part, vanishes. Thereby, I lose the very reality I seek to investigate; hence, I disclaim the use of the term “metaphor” for this notion.

3 A Central Reference Point: The Heavenly Council

Throughout the ancient Near East, events in the terrestrial world, both political and personal, were perceived as emanating from the celestial sphere. More often than not, incidents in the human world were interpreted as the results of decisions made in the divine council.¹⁴ This council was viewed as “the highest authority in the universe,” Thorkild Jacobsen explains. “Here the momentous decisions regarding the course of all things and the fates of all beings were made and were confirmed by the members of the assembly.”¹⁵ In the polytheistic model in Mesopotamia, for example, the members usually consist of the gods Anu, Enlil, Enki, and other major deities. In the monotheistic model of biblical Israel, meanwhile, the members consist of the God of Israel, YHWH, and celestial beings of lesser status: subordinate deities and angels.¹⁶ Individual humans with intermediary roles, such as the biblical prophets, may also participate in the heavenly council.¹⁷

14 E. T. Mullen, Jr., *The Divine Council in Canaanite & Early Hebrew Literature* (HSM 24; Chico, Calif.: Scholars Press, 1980); L. K. Handy, *Among the Host of Heaven: The Syro-Palestinian Pantheon as Bureaucracy* (Winona Lake, Ind.: Eisenbrauns, 1994); Walton, *Ancient Near Eastern Thought*, chap. 4, esp. 92–97. On this notion in rabbinic literature, see E. E. Urbach, *The Sages: Their Concepts and Beliefs* (trans. Israel Abrahams; Jerusalem: Magnes, 1975), chap. 8.

15 Jacobsen, “Mesopotamia,” 136.

16 In later biblical and post-biblical literature, these angels often appear as angelic princes of nations and/or as the archangels, such as Michael (e.g., Dan 10:13, 21; 12:10; Jude 9; 1 En. 9:1–3; Bar 9:5) or Gabriel (e.g., Dan 8:16; 9:21; 1 En. 9:1; Apoc. Mos. 40:2; 1QM 9:14–16; Num. Rab. 2:10).

17 See below, and also my discussion in *Biblical Metaphor Reconsidered*, 119–25.

The primary concern of the divine council is the maintenance of cosmic order.¹⁸ To this end, the council functions first and foremost as an appointive body: it elects and deposes governing agents, including divine rulers and human kings, who are delegated responsibility for effecting order in their particular spheres of influence. The second function of the council is judicial: whenever the cosmic order is violated, whether by human or divine transgressors, the council is convened in order to judge and condemn the transgressors and thus to restore the proper operation of the cosmos.¹⁹ It is in the context of its judicial role that the heavenly council becomes a divine courtroom, complete with judges, advocates, accusers, testimony, and judicial procedure.

The notion of the heavenly council is well attested in the Bible. It is called by such designations as סוד קדשים “the council of holy beings” (Ps 89:8), סוד אלוה “the council of God” (Job 15:8), קהל קדשים “the assembly of holy beings” (Ps 89:6) or עדת אל “the council of God” (Ps 82:1; or, “the council of El”).²⁰ An

18 See Jacobsen, *Treasures of Darkness*, 77–91; P. D. Miller, “Cosmology and World Order in the Old Testament: The Divine Council as Cosmic-Political Symbol,” in *Israelite Religion and Biblical Theology: Collected Essays* (JSOTSup 267; Sheffield: Sheffield Academic Press, 2000), 422–44; repr. from *HBT* 9 (1987): 53–78. As discussed elsewhere (“God Is King”), I differ from these scholars in that I do not regard the notion of the divine council as an *evocative* metaphor or symbol for what the ancients allegedly found to be beyond their conceptual and linguistic limitations. It is true that the ancients assumed the existence of a sphere and beings outside their ordinary experiences—what we may call the celestial or the otherworldly. However, it is altogether contestable whether they acknowledged the inadequacy of their categories and expressions vis-à-vis that sphere: that any discourse pertaining to that sphere cannot but be metaphorical. Though they did consider that sphere to be largely unknown, it was not because they deemed it to be beyond their epistemic and linguistic competence but because its access was generally denied to humans. Indeed, those few exceptional individuals who supposedly had access to that sphere did describe—and describe *literally*—what they believed to have experienced there.

19 Jacobsen (*Treasures of Darkness*, 86–87) succinctly puts these two functions of the divine assembly in Mesopotamia as follows: “The matters with which this assembly deal were basically of two kinds: it served as a court of law judging and passing sentence on wrongdoers, human or divine, and it was the authority that elected and deposed officers such as kings, human and divine. Two examples of its functioning as a court of law are the banishing of Enlil, when, as a young man, he had raped Ninlil, and the indictment of Kingu for fomenting rebellion in Enūma elish. As part of its elective function it chose Marduk as king in Enūma elish, while the many royal hymns of the Isin-Larsa period refer to the role of the assembly in the election of a human king. Its power to depose kings, divine and human, is strikingly depicted in the great ‘Lament for Ur’ in which the goddess of Ur, Ningal, tells how she suffered under her sense of coming doom.”

20 See S. B. Parker, “The Beginning of the Reign of God: Psalm 82 as Myth and Liturgy,” *RB* 102 (1995): 532–59.

explicit description of this assembly can be found in 1 Kings 22, where the prophet Micaiah envisions, “YHWH sitting upon his throne, with all the heavenly host standing in attendance to the right and the left of him” (v. 19). This assembly is discussing possible ways to depose of the impious king of Israel, probably Ahab, by luring him into a disastrous war—an illustration of both the appointive and judicial functions of the heavenly council. Furthermore, the extraordinary use of the first person plural in statements made by God is best understood as exemplifying official discourse addressed to the heavenly council. For example, when God declares, “Let *us* make man in *our* image, according to *our* likeness” in the narrative of human creation (Gen 1:26) or “Let *us* go down and there (let *us*) confuse their language” in the Tower of Babel story (Gen 11:7a), God is not simply using a “royal plural” or “plural of majesty,” as has long been understood; rather, God is addressing the other celestial beings in the council in order to execute these momentous appointive or judicial decisions.²¹ That said, to call this first person plural a *royal* plural or plural of *majesty* is not off the mark as it is part of the royal paradigm in which God is the divine king who addresses the members of his royal court.

4 Appointive and Judicial Motifs in the Hebrew Bible

Many seemingly unrelated biblical notions can be rendered consistent with one another when viewed in light of the appointive and judicial functions of the heavenly council. Examples of the topics related to the appointive function include: (a) the biblical notion of human creation in the image of God (Gen 1:26–30); (b) the proscription of murder and sanctity of human life (Gen 9:6), (c) the taboo of committing violence against the anointed king (1 Sam 24:5–7; 26:9, 11; 2 Sam 1:14, 16); (d) the recurring warnings against encroachment or the moving of landmarks (Deut 19:14; 27:17; 1 Kgs 21; Hos 5:10; Amos 1; Prov 22:28; 23:10–11);²² and (e) the election of Israel as YHWH’s people (Deut 32:9). Let me elaborate.

21 On “royal plural” or “plural of majesty,” see W. R. Garr, *In His Own Image and Likeness: Humanity, Divinity, and Monotheism* (CHANE 15; Leiden: Brill, 2003), ch. 1, and work cited there.

22 As Tigay notes: “The crime was a direct affront to God because property was assigned by lot, which was believed to be directed by God and expressive of His Will”; J. H. Tigay, *Deuteronomy* (JPS Torah Commentary; Philadelphia: Jewish Publication Society, 1996), 255.

- (a) Humans are created in the image of God as a sign of their being delegated divine authority;²³ as the elected agents of the heavenly council—namely, its ‘plenipotentiaries’—humans are invested with the responsibility to maintain order in the terrestrial world (Gen 1:26–28).²⁴
- (b) Accordingly, to commit an unjustifiable homicide, and thus destroy an image of God, would mean to perform an act of *lèse-majesté* against the divine; hence, the biblical insistence on the sanctity of human life (Gen 9:6).²⁵
- (c) Committing harm against the anointed king is portrayed as taboo in Samuel: David refuses to permit his comrades to harm King Saul, maintaining, despite the latter’s repeated attempts to kill him, that Saul is divinely appointed and thereby sacrosanct. To lay hands on the anointed king would mean to commit a sacrilege against the heavenly authority that elected him.
- (d) Territorial boundaries, domestic and international alike, are part of the divinely established cosmic order and, therefore, their distortion or inva-

23 Cf. Mesopotamian kings said to be created in the image of god(s), as delegates of celestial authority; see P. Machinist, “Kingship and Divinity in Imperial Assyria,” in *Text, Artifact, and Image: Revealing Ancient Israelite Religion* (ed. G. M. Beckmand and T. J. Lewis; BJS 346; Providence, R.I.: Brown Judaic Studies, 2006), 152–88; V. A. Hurowitz, “The Divinity of Humankind in the Bible and the Ancient Near East: A New Mesopotamian Parallel,” in *Mishneh Todah: Studies in Deuteronomy and Its Cultural Environment in Honor of Jeffrey H. Tigay* (ed. N. S. Fox et al.; Winona Lake, Ind.: Eisenbrauns, 2009), 263–74. For the creation of humankind in the Bible, consider, inter alia, S. Talmon, “The Biblical Understanding of Creation and the Human Commitment,” *Ex Auditu* 3 (1987): 98–119; J. Tigay, “‘He Begot a Son in his Likeness after his Image’ (Genesis 5:3),” in *Tehillah le-Moshe; Biblical and Judaic Studies in Honor of Moshe Greenberg* (ed. M. Cogan et al.; Winona Lake, Ind.: Eisenbrauns, 1997), 139–47; idem, “Divine Creation of the King in Psalms 2:6,” *ErIsr* 27 (2003): 246–51; E. L. Greenstein, “God’s Golem: The Creation of the Human in Genesis 2,” in *Creation in Jewish and Christian Tradition* (ed. H. G. Reventlow and Y. Hoffman; JSOTSup 319; London: Sheffield Academic Press, 2002), 219–39; Walton, *Ancient Near Eastern Thought*, chap. 9.

24 Friedman does not think that the use of the first person plural in this passage implies its context to be of the divine council, for the use of the first person plural is limited only to human creation in this story; R. E. Friedman, *Commentary on the Torah* (New York: HarperOne, 2003), 12. In my view, this limitation of the use is adapted for the issue at stake: because the bestowal of celestial authority is of great importance for the members of the heavenly council, God announces it to them.

25 M. Greenberg, “Some Postulates of Biblical Criminal Law,” in *Yehezkel Kaufmann Jubilee Volume* (ed. M. Haran; Jerusalem: Magnes, 1960), 5–28; idem, “Crimes and Punishments,” in *The Interpreter’s Dictionary of the Bible: An Illustrated Encyclopedia* (ed. G. A. Buttrick et al.; 4 vols.; New York: Abingdon, 1962), 1:733–44, esp. 738–39.

sion, unless divinely permitted, would constitute a crime against divine authority.²⁶ Furthermore, according to a variant reading of Deuteronomy 32:8–9 attested in one of the Qumran scrolls and in the Septuagint,²⁷ the Supreme God divided humankind in ancient days into nations according to the number of celestial beings in the council—presumably, seventy—and appointed each of them to govern one nation as its patron deity, while taking Israel as his own; hence, it reads: “for the portion of YHWH is his people; Jacob—the lot of his inherence” (Deut 32:9).

- (e) As such, the election of Israel is also an example of the appointive function of the heavenly council.²⁸ As the unique nation dedicated to YHWH, Israel receives the land that is under the direct providence of YHWH (Deut 11:12) and is delegated the collective royal function of being “a kingdom of priests and a holy nation” (Exod 19:6). While all of humanity are representatives of the heavenly council, Israel is distinguished by its immediate access to YHWH and by the just laws divinely bestowed onto them (Deut 4:6–8; Ps 147:19–20).

26 This is why the people of Israel, when entering the Land of Promise, were commanded to respect their neighbors' territories: “YHWH said to me [Moses]:... Charge the people as follows: You will be passing through the territory of your kinsmen, the descendants of Esau, who live in Seir. Though they will be afraid of you, be very careful not to provoke them. For I will not give you of their land so much as a foot can tread on; I have given the hill country of Seir as a possession to Esau” (Deut 2:2–5; cf. Deut 2:9, 17–19; cf. also Judg 11:24). See M. Greenberg, “The Connection of the People and the Land in the Bible,” in *On the Bible and Judaism* (ed. A. Shapira; Tel Aviv: Am Oved, 1984), 110–24, esp. 112 (Hebrew). Consider also Ps 104:9; Jer 5:22; Prov 8:29; Job 38:8–11 regarding the divinely established boundary between sea and land.

27 Both the Greek text and a Hebrew text discovered in Qumran read “equal to the number of divine beings” (בני אלהים) instead of “children of Israel” (בני ישראל). On this biblical passage, see Tigay, *Deuteronomy*, 302–3, 513–15; and J. Joosten, “A Note on the Text of Deuteronomy xxxii 8,” *VT* 57 (2007): 548–55, esp. 553–54.

28 As Tigay puts it: “The conception is like that of a king or emperor governing the capital or heartland of his realm personally and assigning the provinces to subordinates” (Tigay, *Deuteronomy*, 303). The setting of this allocation can be easily identified as that of the heavenly council, just as its parallel ancient Near Eastern myths about major deities dividing the territories of the universe among themselves also take place in the divine assembly. Cf., e.g., the “Sumerian Flood Story” translated by M. Civil, in *Atrahasis: The Babylonian Story of the Flood* (ed. W. G. Lambert and A. R. Millard; Oxford: Clarendon, 1969), 141, II. 88–98, where five antediluvian cities are given to five major deities of the heavenly assembly as their cult centers.

On the other hand, the topics related to the judicial function of the heavenly council include: (a) the “scroll of life” (or the “scroll of the living” in Ps 69:29 [Eng. 69:28]; cf. Exod 32:32; Ps 40:8 [Eng. 40:7] (?); 56:9 [Eng. 56:8]; Isa 4:3; Mal 3:16); (b) the use of legal formulations in prayers (e.g., “Judge me, YHWH!” in Ps 26:1; cf. 43:1); (c) the repeated injunctions to treat the socially underprivileged with fairness and compassion (e.g., Exod 22:20–26 [Eng. 22:21–27]; 23:6, 9, 12; Lev 19:33–34; 23:22; Deut 1:16; 10:18–19; 24:17–22; 27:19); (d) depictions of the rise and fall of cities and kingdoms (e.g., the Tower of Babel in Gen 11:1–9; Sodom and Gomorrah in Gen 18:17–19:38; Egypt in Exod 6:6; 7:4; 12:12; Moab in Jer 48:47); and (e) the roles of the biblical prophet as both emissary and intercessor (e.g., Ezek 22:28–31).²⁹ To elaborate:

- (a) The track of human deeds and misdeeds is recorded in the “scroll of life,” which is the ledger of the heavenly court; the testimony of this scroll keeps God informed about human activities and transgressions, enabling him to arbitrate the cases of all people fairly, hence, “to repay every man according to his ways, with the proper fruit of his deeds” (Jer 17:10).³⁰
- (b) When the psalmist believes that he has conducted his life as he ought to and yet misfortunes befall him, he petitions God to (re)investigate his case. Accordingly, his use of legal terms in his prayers indicates his appeal to God as the Justice of the divine council. Hence, for example, we read: “Investigate³¹ me, YHWH, and try me; test my heart and mind . . . I walk in faithfulness to you” (Ps 26:2).³²
- (c) The widow, the fatherless, the resident alien, the poor, and the debtor had a precarious legal status in antiquity, as they had limited direct recourse

29 E.g., Isaiah, prior to his prophetic commissioning, sees God sitting on a high and lofty throne presumably addressing the members of the council, as God’s use of the first person plural suggests: “Whom shall I send and who will go for us?” (Isa 6:8).

30 See S. M. Paul, “Heavenly Tablets and the Book of Life,” in *Divrei Shalom: Collected Studies of Shalom M. Paul on the Bible and the Ancient Near East, 1967–2006* (Leiden: Brill, 2005), 59–70, reprint from *JANES* 5 (1974): 345–54 (*The Gaster Festschrift*). For rabbinic and Jewish sources on this notion, see A. J. Heschel, *Heavenly Torah: As Reflected Through the Generations* (ed. and trans. G. Tucker with L. Levin; New York: Continuum, 2005), 328–29, 334–36.

31 For בָּחַן in the sense of “to inquire, investigate,” see Gen 42:15–16. See also Bovati, *Re-establishing Justice*, 244–47.

32 On this, consider also S. E. Holtz, “Praying as a Plaintiff,” *VT* 61 (2011): 258–79 and works cited there.

to the terrestrial courts.³³ Therefore, when their rights were violated, they could only directly “cry out”—namely, “make a legal appeal”³⁴ (Exod 22:22, 26 [Eng. 22:23, 27])—to the divine Judge, and the Judge himself would promise to investigate and rectify whatever wrongs were done against them; hence, the repeated admonition against oppressing those weak members of society.³⁵

- (d) Not only individual cases but also large-scale cases of war, politics, and history are conceived of as outcomes of the decrees made by the heavenly court. God himself or his divine emissaries come to earth “to see”—that is, “to investigate”³⁶—the building of the Tower of Babel or the crimes of Sodom and Gomorrah before issuing a decree of destruction. The calamities that befall Egypt and Moab are also presented as divine “judgments” (שפטים in Exod 6:6; 7:4; 12:12; משפט in Jer 48:47).
- (e) The process of divine justice involves debate, often heated and extended, by members of the council, including the attorney of the accused party.³⁷

33 F. C. Fensham, “Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature,” *JNES* 21 (1961): 129–39. See also my discussion on a figurative term for intercession, אָהוּז אָבוּת “assuming a fatherly attitude,” in *Biblical Metaphor Reconsidered*, 148–50.

34 The Hebrew verb זָעַק or צָעַק “to shout, cry out” in a legal context means “to bring a lawsuit,” or “to sue someone” (cf. Exod 22:26; 2 Kgs 6:26; 8:3, 5); see I. L. Seeligmann, *Studies in Biblical Literature* (ed. E. Tov et al.; rev. ed.; Jerusalem: Magnes, 1996), 250 (Hebrew); Bovati, *Re-establishing Justice*, 314–20, 323–28. Cf. also the idea of Abel’s blood crying out in Gen 4:10. Note that the Akkadian verb *ragāmu* “to call, call out” also means “to lodge a claim, to sue, to bring a legal complaint, to claim something by lawsuit” in legal contexts (*CAD* [R]: 63–66), and the noun *rugummû* “outcry” means “legal claim” (*ibid.*, 405). Cf. also *rigmu* “voice, sound,” which also has an idiomatic meaning in a legal context, i.e., “complaint, request, legal complaint” (*CAD* [R]: 334); on this, see my *Biblical Metaphor Reconsidered*, 82–83 n. 38.

35 The destruction of Sodom and Gomorrah indeed begins with an “outcry” (Gen 18:20–19), referring, most likely, to the outcry of the economically and socially oppressed members of society (Ezek 16:49); see M. Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem and Minneapolis: Magnes and Fortress, 1995), 215–19.

36 The words for רָאָה “to see” and יָדַע “to know” in a legal context mean “to witness” (Lev 5:1); see Seeligmann, *Studies in Biblical Literature*, 156 (and also 147), where he discusses the legal nuances of Gen 18:20–21.

37 The notion of intercession in the heavenly council is attested both in Mesopotamian and biblical literature. More often than not, however, the argument in the Mesopotamian version takes place horizontally, between the divine and the divine, whereas in the biblical version it is vertical, between the divine and the human; see Jindo, *Biblical Metaphor Reconsidered*, 120–21.

It also involves court emissaries who inform the accused party of the proceedings. In this respect, the biblical prophet plays a double role: on the one hand, he is a messenger of the divine council, sent to inform Israel (and, at times, other nations) that their case has been discussed, or their sentence issued, by the heavenly court; on the other hand, the prophet is also an advocate for Israel before the accusing party—who is often God himself—and thus an empowered interlocutor to God and an active participant in the heavenly courtroom.³⁸ The classic examples of prophetic intercession in the heavenly council are: Abraham arguing with God on behalf of Sodom (Gen 18:23–33); Moses on behalf of the people of Israel (Exod 32–33; Ps 106:23); Amos on behalf of the Northern Kingdom (Amos 7); and Jeremiah and Habakkuk on behalf of the Southern Kingdom (Jer 14–15; 18:20; Hab 1).³⁹

The matters dealt with by the heavenly court are not only terrestrial but also celestial. In Psalm 82 God is envisioned as judging the members of the heavenly council, deposing them from their judicial and perhaps also custodial roles (see above) because they have abused their powers, exonerated the guilty and ignored the pleas of the poor and orphaned for justice (vv. 2–4). As God decrees a mortal death to these celestial judges, the psalmist calls on him to extend and establish his dominion throughout the world: “Arise, O God, judge the earth, for you shall take possession of all the nations” (v. 8).⁴⁰ For biblical authors, such a drastic change in the international landscape as the overthrow of a monarch may be seen as the result of that nations’ patron angel being judged and deposed in the heavenly council (cf. Isa 24:21; Dan 10:13, 21; 12:1).

The distinction between the appointive and the judicial functions of the heavenly council discussed thus far is not a rigid one. Just as the king and his council in antiquity would take every possible action to secure the stability of the kingdom, so too God and his council would be understood to do the same on the celestial level. Deliberations in the heavenly court are equivalents

38 See my discussion in *Biblical Metaphor Reconsidered*, 119–25, and works cited there.

39 Jeremiah also mentions the heavenly council when he criticizes the “false prophets” for not having attended the council: “But who stood in the council of YHWH (בְּסוּד ה') and saw and heard his word?!” (23:18). To wit, the true prophetic word comes only to the prophets who have attended the heavenly council of YHWH. For more on this, see my *Biblical Metaphor Reconsidered*, 70–71, n. 20.

40 On this psalm, see P. Machinist, “How Gods Die, Biblically and Otherwise: A Problem of Cosmic Restructuring,” in *Reconsidering the Concept of Revolutionary Monotheism* (ed. B. Pongratz-Leisten; Winona Lake, Ind.: Eisenbrauns, 2011), 189–240 and works cited there.

of deliberations that take place in the royal court in the king's palace; every matter on which the order of society depends is decided there—be that an issue of appointment, deposition, governance, or judgment. All the actions of the heavenly council, including their appointive and judicial functions, are not ends in themselves; rather, they serve as a means to establish or restore the order and harmony of the cosmos.

While the above discussion illustrates the pivotal role played by the heavenly council in the formation of a monotheistic worldview, what follows will delineate its significance in the context of a biblical conception of human existence.

5 The Divine Council and the Biblical Conception of Human Existence⁴¹

When the world is conceived as operating according to the decisions made by the heavenly council, the recognition of the council's authority is seen as a cosmic imperative—which, as I have suggested elsewhere, biblical authors called the “fear of God” (יראת אלהים).⁴² The fear of God is a particular state of mind that derives from the recognition that one is not an autonomous being but rather a subject of a cosmic government under the absolute authority and providence of God and his council.⁴³ The presence of this fear prevents

41 The following discussion is based in part on my earlier work, “On the Biblical Notion of the ‘Fear of God’ as a Condition for Human Existence,” *BibInt* 19 (2012): 433–53.

42 There may be a possible difference in the nuance between the two similar, yet not entirely identical, phrases: יראת ה' “fear of YHWH” and יראת אלהים “fear of God(s).” While the former phrase refers exclusively to the fear of the God of Israel, YHWH, the latter phrase—because of the semantic ambiguity of the word אלהים “God(s)” —can refer either to the same fear in particular (i.e., God = YHWH), or to the fear of the celestial beings and divine realm in general, especially when it is used in contexts which involve gentiles who do not necessarily worship YHWH (cf. Gen 20:11; 42:18; Job 1:8; 2:3).

43 In scholarship, this fear is frequently identified with such categories as virtue (e.g., “decency” or “piety”), mental faculty (e.g., “conscience”), or an ineffable sense of the otherworldly (e.g., Otto's sense of the numinous). As I see it, however, the fear of God is rather a distinct state of mind that may lead individuals to live and behave virtuously. Nor is it an inner faculty but instead an awareness of the living presence of the celestial authority—an awareness that affects and directs one's inner faculty. Nor is it an emotional, spontaneous sense of the numinous, but rather a mental state attained through a reflection about one's relationship to the celestial authority, whose presence may evoke such an ineffable, numinous feeling.

human beings from interpersonal malefactions, including murder (Exod 1:17, 21), adultery (Gen 39:9), exploitation of the weak (Deut 25:18), breach of faith and any abuse of sovereignty (Gen 42:18); its absence, on the other hand, could lend humans the audacity to commit such violations (Gen 20:11; Deut 25:18).⁴⁴

It comes as no surprise that biblical authors consider this “fear of God” to be a basic norm for all human beings. Because the meaning of human existence—as that of all beings—is conceived in terms of divinely assigned roles and functions, to lack this fear is potentially ruinous.⁴⁵ Without it, one may defy or distort the world order, thereby failing to fulfill the meaning of one’s existence as a created being and challenging, de facto, the absolute cosmic authority that has designed the order itself. In this respect, self-reliance is also potentially detrimental, for it can overshadow—and thus diminish the reverence for—the divine authority and its providence.⁴⁶ Indeed, it is in this context that the divine command to eradicate the memory of Amalek is best understood (Exod 17:14; Deut 25:19). Amalek, having “no fear of God” (Deut 25:18), challenges the very sovereignty of divine rule, thereby representing a mode of life that disregards this basic normative category.⁴⁷ To ignore or reject this category is nothing other than the act of a fool; hence, the repeated dictum: “the Fear of YHWH is the beginning of wisdom” (Prov 1:7; 9:10; 15:33; Ps 111:10).⁴⁸

In this respect, the biblical notion of the dignity of human existence may not be as inherent or inalienable as is often presumed. Indeed, the idea of *Imago Dei*, or humans created in the image of God, in its original context does not denote the basis for inalienable rights that are presumably inherent in human existence; instead, it provides a condition for fulfilling the cosmic roles

44 See R. H. Pfeiffer, “The Fear of God,” *IEJ* 5 (1955): 41–48; Y. Kaufmann, *The Religion of Israel: From Its Beginning to the Babylonian Exile* (trans. M. Greenberg; Chicago: University of Chicago Press, 1960), 397; M. Greenberg, “Mankind, Israel and the Nations in the Hebrew Heritage,” in *No Man Is Alien: Essays on the Unity of Mankind* (ed. J. R. Nelson; Leiden: Brill, 1971), 15–40, esp. 20; M. Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon, 1972), 274–81.

45 Cf. Walton, *Ancient Near Eastern Thought*, 179–215, esp. 179–91.

46 Such sapiential warnings in Proverbs concerning self-confidence in one’s own intellect and understanding as the following are best understood in this light: “Do not be wise in your own eyes but fear YHWH and shun evil” (Prov 3:7) or “The way of a fool is right in his own eyes but the wise man accepts advice” (Prov 12:15). For biblical criticisms of self-assurance and trusting human force, see, e.g., Isa 2:22; 5:21; Prov 3:5; 14:12; 21:20, 29; 26:5, 12, 16; 28:11.

47 I intend to treat this subject in one of the sequels to this study.

48 See M. L. Barré, “‘Fear of God’ and the World View of Wisdom,” *BTB* 11 (1981): 41–43.

and functions that are divinely assigned to humans. As noted above, endowment with a divine image signifies that humans have been delegated celestial authority to serve as custodians of the terrestrial world. Therefore, what gives meaning and dignity to human existence is the fulfillment of such delegated responsibilities. Accordingly, the fear of God is also the beginning of, and a condition for, human dignity.⁴⁹

It should be noted, however, that the concern of biblical authors with respect to the divine council is not in articulating its cosmic significance or function but, rather, in elucidating the problems involved in the human condition vis-à-vis its presence and governance in the world. There are at least two major challenges biblical authors seem to acknowledge in relation to this matter—one involving the process of recognizing the celestial authority and the other pertaining to the biblical conception of human existence. They can be stated as follows:

Recognition of the Celestial Authority and its Internalization: To recognize the celestial authority—that is, to internalize the fear of God—is to transcend the self, to perceive the world and the self from a perspective that is not one's own. However, gaining this insight is an extremely difficult task, requiring one to achieve a radical cognitive breakthrough, overcoming all the mental habits that form and control everyday life. It also calls for a radical shift in one's normative paradigm from both the autonomous to the heteronomous and from the anthropocentric to the theocentric, thereby internalizing the norms and the meaning of the world as conceived from the perspective of the cosmic sovereign whose presence may generally be imperceptible in mundane life. It requires, in other words, an understanding that the ultimate source of one's normative and ontological matrix is not the self but the sovereign.

49 To reiterate a point I made in a previous work ("On the Biblical Notion of the 'Fear of God,'" 451 n. 37): critics oftentimes overstate the significance of human dignity—especially the sanctity of human life—in the biblical value system; see, in particular, Greenberg, "Some Postulates of Biblical Criminal Law," 5–28. As is well known, mishnaic law is so defendant-friendly that it makes it practically impossible to execute any criminal. This tendency is often attributed to the notion of the sanctity of human life—that is, to a desire to avoid the defacing of the image of God by putting a human to death (see, e.g., *m. Sanh.* 4:5; 5:1; 6:5). As I see it, however, the reason for this tendency rather seems to lie elsewhere—namely, not in what we as humans have (i.e., the image of God) but rather in what we do not have (i.e., the ability to make a perfect, God-like judgment which would justify us in executing an irrevocable punitive action; hence, the Mishnah's stance of avoidance toward the death penalty).

Recognition of the Celestial Authority and the Biblical Conception of Human Existence: In biblical literature, humans are conceived to be the custodians of God's created world, possessing the ability to make autonomous decisions. This conception of human existence, however, contains an inherent tension: humans must exercise their free will in order to fulfill their custodial role in the created world, yet the exercise of free will can lead them to defy the divine will, thereby leading to both their own destruction and that of the world as a whole (cf. the Flood story in Gen 6–9). In this respect, unless they fully recognize the authority of the cosmic sovereign and internalize the fear of God, not only does their existence remain a 'cosmic misfit' but the world as such is under threat of discord and destruction. Indeed, much of biblical cosmic drama revolves around this tension in particular and the dissonance between divine and human agency in general.

These are no more than preliminary observations, each of which I intend to expand on separately. Despite this, the above discussion should show—even when taken alone—that the significance of the divine council motif to the biblical vision of humanity is fundamental: it profoundly shaped and affected the self-understanding and inner life of biblical authors.

6 Concluding Remarks

The biblical motif of divine justice and the courtroom is part of a complex paradigm of divine kingship through which biblical authors structured how they lived and how they understood life and reality. That motif was a subcategory of the biblical notion of the divine council—a central reference point from which everything else was perceived, categorized, and evaluated. These crucial points are frequently overlooked in an atomistic analysis of the divine courtroom motif in biblical literature, which thus inevitably produces a static interpretation of the motif while undermining its significance within the broader context of biblical religion and literature.

A final word of reflection: There is something paradoxical about the biblical worldview described above in general and its notion of the heavenly council in particular. As noted at the outset, we as humans usually form worldviews in order to gain an understanding of the world and our life in it. As shown in this study, the notion of the heavenly council functions as part of a paradigm through which biblical authors sought to illustrate the deeper truth behind appearances: that what appears to the naked eye to be a matter of coincidence

or natural causality is a result of decisions made in the heavenly council. At the same time, this very notion leads us to recognize that what we see and think we know largely remains unknown. As such, it makes us realize something essential about our human condition: that our understanding is always partial, that we cannot grasp all of the meaning of what we experience. When viewed within this framework, such a sense of self-uncertainty may indeed be the desired state of mind.

Getting Perspective: The Divine Courtroom in Tertullian of Carthage's *Apologeticum*

Meira Z. Kensky*

1 Introduction

In my book, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature*, I engage in a full-length study of scenes of the divine courtroom in Jewish and Christian literature from antiquity. My central argument is that these courtroom scenes serve to invite readers to consider the question of divine justice, effectively rotating the courtroom scene: “The courtroom, rather than simply functioning on the narrative level with the reader as an additional spectator, is rotated so that the reader is in the judicial position, and it is the judge and the process itself which are being adjudicated. When man is tried, it is truly God who is on trial.”¹ This is true not only in terms of narrative presentation, but also in terms of courtroom imagery in rhetoric. In the *Ars Rhetorica*, Aristotle writes that “the object of rhetoric is judgment—for they judge the deliberations and the verdict is a judgment” (*Ars. Rhet.* 2.1.2). As I ask in my book, “If the reader is to be addressed as a judge even in epideictic rhetoric, how much the more so is the reader invited to take a judicial position when the rhetoric is specifically forensic?”² We see this dynamic in classical oratory, for example, in Isocrates’ *Antidosis*, when he adopts the fiction of a courtroom suit in order to defend his teaching, explicitly asking his audience to sit in judgment upon him (Isoc. *Ant.* 8). When authors utilize courtroom imagery, both in narrative and rhetoric, they are begging the reader to take a certain stance on the scene in front of them: a judicial stance.³

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1 M. Z. Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (WUNT 2/289; Tübingen: Mohr Siebeck, 2010), 5.

2 Ibid., 9.

3 Narrative is found within apologetic literature, since forensic rhetoric properly includes a *narratio* (or *diēgēsis*) as part of its structure. However, a major difference between stand-alone narrative and narrative embedded in forensic discourse is the explicit presence of the author. As Loveday Alexander explains, “the authorial voice of the inscribed speaker will always be there to explain the narrative and drive home the conclusions the audience should

With regard to early Christian literature, I look closely at the way divine courtroom imagery appears in the letters of Paul, the Gospels of Matthew and John, the book of Revelation, and the non-canonical *Apocalypse of Peter* and the *Visio Pauli*. Then, as an example of an early Christian reader who did what these scenes asked and passed verdict on God, I examined the teachings of the arch-heretic Marcion of Sinope and the response to his assertions by Tertullian of Carthage, who makes an impassioned argument against Marcion that judgment is proper to God. Tertullian must “defend God from Marcion’s charges that the way God acts as revealed in the Old Testament is unjust, unreasonable, and not befitting the true God.”⁴ To combat these charges, Tertullian engages in an apologetic strategy, attempting to vindicate God from the charges leveled at him by Marcion. To do this, he must convince the reader not only that Marcion is wrong but that God is a just judge. In a strategy fitting to apologetic literature, “even though God’s role as judge is being discussed, that is the point to be adjudicated before the court of the reader. This effectively rotates the courtroom, and puts the portrayal of God exercising judgment ‘on trial’ before the reader.”⁵

Though my discussion in the book is limited to the *Adversus Marcionem*, Tertullian is an example of an author who is steeped in the imagery of the courtroom and of divine judicial activity. The writings of Tertullian are peppered with references to the divine courtroom and the mechanisms of divine judgment. Mentions of the divine courtroom are found in a wide swath of Tertullian’s writings over the course of his entire career, from the early *Ad Nationes* to the late *Adversus Marcionem*.⁶ They occur in all types of writings, including apologetic, deliberative, and exhortative treatises. It is not an overstatement to assert that the divine courtroom forms a foundational element of the way Tertullian conceives of God’s plan for the universe, and constitutes for him a set of images that he can call upon as an iconic proof-text for a number of different purposes. In what follows, I will build upon my previous research by examining the way the divine courtroom appears in Tertullian’s *Apologeticum*,

draw from it.” Alexander, “The Acts of the Apostles as an Apologetic Text,” in *Apologetics in the Roman Empire: Pagans, Jews, and Christians* (ed. M. Edwards et al.; Oxford: Oxford University Press, 1999), 25.

4 Kensky, *Trying Man, Trying God*, 289.

5 Ibid.

6 For a discussion of the issues of dating Tertullian’s writings, and a proposed chronological list of all his writings, see the now-classic work of T. D. Barnes, *Tertullian: A Historical and Literary Study* (Oxford: Clarendon Press, 1971). Barnes’ chronology remains appreciated and utilized by Tertullian scholars; for discussion of the impact of Barnes’ work see G. D. Dunn, *Tertullian* (London: Routledge, 2004).

an apologetic treatise from the early part of Tertullian's career. We can see in this text a number of different ways in which the divine courtroom can be utilized in apologetic rhetoric as part of a hortatory strategy designed by a talented—sometimes called “irascible”—author to achieve multiple ends for a multifaceted readership.

Tertullian's *Apologeticum* falls into the category of apologetic literature, a term which is most often applied to the type of literature that became popular in the second century CE amongst Christian authors looking for a way to defend their faith before (mostly) pagan readers.⁷ It is a genre of literature that combines elements from classical forensic apology and deliberative address. It is distinguished from formal apology in the sense that it is not meant to be a speech delivered in an actual law court at a criminal trial, but rather uses the law-court scenario as a venue to make what is essentially a deliberative or protreptic argument. The working definition given by Mark Edwards, et al., is useful here: “Apologetic is thus the defence of a cause or party supposed to be of paramount importance to the speaker. It may include *apologia* in the sense of Plato's *Apology*, the defence of a single person, but is distinguished from polemic (which need not assume any previous attack by the opponent) and from merely epideictic or occasional orations.”⁸ Though this genre does not automatically assume a previous attack, it certainly can include responses to particular attacks, and many have sought to contextualize individual examples of apologetic literature by reconstructing the historical circumstances that led to its composition.

This is certainly the case when it comes to Tertullian. Though our historical information about Tertullian is limited at best, and there abound many problems with dating the individual treatises of his vast corpus, scholarship seems to be in consensus that this work dates from the earlier portion of his career, the last decade of the second century, before Tertullian became the great proponent of New Prophecy that he is remembered as today.⁹ Robert Sider

7 This is not to say that no literature before this period could be classified as apologetic, or that apologetic is a term appropriate to Christian literature alone, but rather that this term is most often applied to this particular group of authors, whose penchant for writing in this genre has earned them the designation “Apologists.” In the second century this term is most often applied to authors beginning with Quadratus (ca. 125 CE), and includes Justin Martyr, Tatian, Athenagoras, and Theophilus. See R. Grant, *Greek Apologists of the Second Century* (Philadelphia: Westminster, 1988).

8 M. Edwards et al., “Introduction: Apologetics in the Roman World,” in *Apologetics in the Roman Empire*, 1.

9 On Tertullian's relationship to the “New Prophecy,” see C. Trevett, *Montanism: Gender, Authority, and the New Prophecy* (Cambridge: Cambridge University Press, 1996), 66–76;

proposes a date of 197 for the *Apologeticum*.¹⁰ This would place the immediate context for the *Apologeticum* in the wake of the Severan victory.¹¹ This is certainly a plausible scenario, and as we will see it is more than evident from the *Apologeticum* itself that Christians are being brought up on criminal charges and yet denied proper judicial procedures.

Because apologetic literature combines elements of classic forensic apology with deliberative or protreptic elements, it is able to achieve various ends and address various hearers. In a classic passage from the *Ars Rhetorica*, Aristotle explains the following:

The kinds of Rhetoric are three in number, corresponding to the three kinds of hearers. For every speech is composed of three parts: the speaker, the subject of which he treats, and the person to whom it is addressed, I mean the hearer, to whom the end or object of the speech refers. Now the hearer must necessarily be either a mere spectator or a judge, and a judge either of things past or of things to come. For instance, a member of the general assembly is a judge of things to come; the dicast, of things past; the mere spectator, of the ability of the speaker. Therefore there are necessarily three kinds of rhetorical speeches, deliberative, forensic, and epideictic. (1.3.1–3; trans. LCL)

The audience of classic forensic address is therefore properly a judge, who passes judgment on events and actions that have already occurred. In deliberative

see also D. Wright, "Tertullian," in *The Early Christian World* (ed. P. Esler; 2 vols.; London: Routledge, 2000), 2:1027–47.

- 10 Sider, *Christian and Pagan in the Roman Empire: The Witness of Tertullian* (Washington, D.C.: Catholic University of America Press, 2001), xvii. In addition to this text, the chronology proposed by Barnes places several other texts in this highly productive year, including *Ad Martyras*, *De Spectaculis*, and the *Ad Nationes*, which many (including Barnes) believe is somewhat of a "first draft" of the *Apologeticum*. The complete chronology can be found in Barnes, *Tertullian*, 55; discussion of the *Ad Nationes* at 104ff.
- 11 As Sider explains, "The emperor Septimus Severus had in that year finally subdued the last of his rivals. In Rome his victory was followed by a savage purge from the Senate of those who had supported Severus's enemies, and in some cases of those whose loyalty was questionable. One can imagine that beyond Rome as well officials would have looked for the public affirmation of loyalty to the regime of the victor. Christians who stood aloof from pagan celebrations and public affirmations of support for the emperor would have readily been open to suspicion, and suspicion would have given rise to charges." Sider, *Christian and Pagan in the Roman Empire*, 8. See also the discussion by Barnes, *Tertullian*, 33–34.

oratory, on the other hand, the addressee passes judgment on the best course to take in the future. Rhetoricians must keep in mind the proper ends and addressees when composing their speech. But because Christian apologetic combines elements of both of these two types of rhetoric, authors can (and do) ask their audiences to engage in both types of judgments at the same time: both of things past (as proper to forensic oratory) and of things future (as proper to deliberative oratory). Apologists can thus take advantage of this dual role of their hearers when constructing their treatises, asking audiences to sit in judgment on what has already occurred as well as on what will occur, should occur, and what role they should play in that sequence of events.

This is of import when thinking about the way imagery of the divine courtroom appears (which it does, not infrequently) and works in apologetic literature. Apologetic literature has a number of possible audiences and readers. First, the named or stated readers, that is to say, *real* judges, people who did sit in judgment over Christians (like Roman tribunes); second, a wider audience of people who either supported or did not support that kind of judgment (like pagan/North African/Roman readers); third, those who were *being judged* (Christians under accusation or even in prison); and fourth, those who lived with the specter of *possibly being judged* (any Christian). Many apologies, like those of Tertullian, work to address all those readers at the same time. Their apologies, therefore, must be read as working on multiple levels, for multiple readerships. It is the nature of this type of literature that it is able to reach and thus address this type of multi-faceted implied audience.

By its very nature, then, apologetic literature employs an implied trial scenario. This allows an author to provide a defense against charges (real or imagined) before an audience conceived as sitting in judgment on the issues before them. Since apologetic literature has a wider audience, however, it also allows an author to mount an attack on the legal system itself, encouraging the audience to judge not only the merits of the (real) cases being brought before the (real) judges, but also to judge the judges themselves, to judge whether or not the way they have dealt with the issues are meritorious and consistent with justice, or spurious and malicious, inconsistent with justice so conceived. The implied trial scenario has the additional effect, therefore, of changing the judicial rôles of the actors in the courtroom. The (real) judges have become the defendants in a trial before a judicial readership.

What then happens when, inside this imagined courtroom, there is repeated mention of an even larger, wide-angle courtroom that stands behind everything? What is the discursive dynamic that takes place when, to paraphrase Ezekiel 1, we have courtrooms within courtrooms? How do mentions of the divine

courtroom work inside this type of apologetic literature? In what follows, I will examine several passages from the *Apologeticum* in which Tertullian, an author steeped in legal imagery and metaphor,¹² calls upon the imagery of the divine courtroom as part of his rhetorical programme, in order to demonstrate the effect of this type of imagery in such an apologetic and protreptic task.¹³

Tertullian's *Apologeticum* is a work in fifty chapters, addressed loosely to "Rulers of the Roman Empire" (*Romanii imperii antistites*; *Apol.* 1.1; *bona prae-sides*; *Apol.* 50.12)¹⁴ but, like many other apologetic works, intended to reach a wide audience of readers.¹⁵ While Sider believes that this is addressed to a wide pagan audience, it is much more likely that this would have found an audience among literate Christians.¹⁶ While it is certainly possible that Tertullian intended his work to be read by the provincial and urban literati, it is by no means certain, and this work likely had the purpose of bolstering the faith and confidence of Christians in Carthage in addition to providing a defense against charges against Christians. As such, we must keep in mind that the implied

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- 12 There is a long-standing debate as to whether or not Tertullian was himself a jurist or lawyer. Since both the *Digest* and the *Codex Justinianus* quote the legal opinions of a jurist named Tertullianus, and Eusebius tells us that Tertullian was a man skilled in Roman law and illustrious at Rome (*H.E.* 1.2.4), there was some thought that perhaps these two were the same. However, Barnes definitively refuted this connection. Cf. Barnes, *Tertullian*, 22–28. For a more recent assessment of the evidence, see D. Rankin, "Was Tertullian a Jurist?" *StPatr* 31 (1997): 335–42.
 - 13 There are two distinct manuscript traditions of the *Apologeticum*, the main tradition, attested by over thirty manuscripts, and the alternate tradition found only in the *Codex Fuldensis*. This analysis is based on the main manuscript tradition, following the *editio princeps* of F. Oehler, *Q.s.F. Tertulliani Quae Supersunt Omnia* (Lipsiae: T. O. Weigel, 1853), 111–302. For discussion of the *Codex Fuldensis* and its variants, see the introduction to the *Apologeticum* by T. R. Glover in *Tertullian/Minucius Felix* (LCL 250; Cambridge, Mass.: Harvard University Press, 1931), xxi–xxiv.
 - 14 The terms refer to provincial governors. Discussion of the role of provincial governors in general and in North Africa in particular can be found in J. B. Rives, *Religion and Authority in Roman Carthage from Augustus to Constantine* (Oxford: Clarendon Press, 1995), 76–85.
 - 15 See R. Grant, *Augustus to Constantine: The Rise and Triumph of Christianity in the Roman World* (Louisville: Westminster John Knox, 2004), 102, on this being the case for apologetic literature in general. This is *contra* the opinion expressed, for example, by C. Becker, *Tertullians Apologeticum: Werden und Leistung* (Munich: Kösel-Verlag, 1954).
 - 16 In fact, though Sider (*Christian and Pagan in the Roman Empire*, 2–3) takes this position repeatedly in his introduction to the *Apologeticum*, in a footnote on the text itself he does concede that "it is likely that he wrote his *Apology* with some expectation of a Christian audience also" (*ibid.*, 8 n. 8).

audience of the treatise is much larger than its immediate vague "Roman Ruler" addressees.¹⁷

In his classic study of the forensic nature of the *Apologeticum*, Richard Heinze demonstrated that the text can be divided into the traditional rhetorical categories of *exordium* (1–3), *partitio* and *propositio* (4.1–2), *refutatio* (4–45), and *peroratio* (46–50).¹⁸ The more recent outline by Sider divides the treatise into four main sections: an introduction (1–6), a section that answers charges based on rumor (such as the charges of cannibalism and sexual improprieties, 7–9), the main section of the treatise, dealing with the substantive charges (that Christians do not worship the gods and that they are guilty of treason, 10–45),¹⁹ and a concluding section (46–50).²⁰ As is evident, the bulk of the treatise is devoted to answering what seem to be the real accusations that Christians faced in Roman North Africa.²¹ Tertullian addresses the totally unsubstantiated charges first as part of his strategy to lay a foundation of skepticism and goodwill before he confronts the heart of the matter, the charges which are more serious, and which are more difficult to answer.

17 On the question of Tertullian's audiences for his apologetic treatises, Simon Price writes that "the actual readership of the works is of course unknowable, but perhaps not crucial. Even if existing Christians constituted the main readership, as is assumed in one of Tertullian's treatises, the exoteric form of the treatises ensured that Christians could easily make use of their arguments. Their own faith might be strengthened, but in addition they had ready-made arguments to use in discussions with non-Christians." S. Price, "Latin Christian Apologetics," in *Apologetics in the Roman Empire*, 105–6.

18 R. Heinze, *Tertullians Apologeticum* (Leipzig: B. G. Teubner, 1962). Discussion of Heinze can be found in R. Sider, *Ancient Rhetoric and the Art of Tertullian* (Oxford: Oxford University Press, 1971). For a classic Latin discussion of the layout of a piece of forensic oratory, see Quintillian, *Institutio Oratoria* III.9.

19 *Sacrilegium et maiestas*, *Apol.* 10.1.

20 The complete outline can be found in Sider, *Christian and Pagan in the Roman Empire*, 5–6. An alternate breakdown which is not as compelling can be found in Price, "Latin Christian Apologetics," 109 n. 10.

21 On the question of "why were the Christians tried?", G. E. M. De Ste Croix argues that Tertullian's summary of the substantive charges (that they neither worship the gods nor offer sacrifice for the emperors) is an accurate representation of the legal charges against the Christians, and that "there is ample evidence to show that the situation remained substantially the same right through the third and early fourth centuries, even during the general persecutions." G. E. M. De Ste Croix, *Christian Persecution, Martyrdom, and Orthodoxy* (ed. M. Whitby and J. Streeter; Oxford: Oxford University Press, 2006), 112–13.

2 Setting the Stage: *Apologeticum* 1

One of the literary features of the *Apologeticum*, a feature found also in many of Tertullian's other writings, is that of a constant change of perspective. As in oratory, apologetic literature is presented in first person, with a speaker addressing an audience (usually in the second person). At the beginning of the *Apologeticum*, Tertullian addresses the Roman leaders in the vocative:

Rulers of the Roman Empire, if, seated for the administration of justice on your lofty tribunal, under the gaze of every eye (*aperito ed edito*), and occupying there all but the highest position in the state, you may not openly inquire into and sift before the world the real truth in regard to the charges made against the Christians; if in this case alone you are afraid or ashamed to exercise your authority in making public inquiry with the carefulness which becomes justice; if, finally, the extreme severities inflicted on our people in recently private judgments, stand in the way of our being permitted to defend ourselves before you, you cannot surely forbid the Truth to reach your ears by the secret pathway of a noiseless book. (*Apol.* I. 1)²²

Depending on the reader, this (slightly sarcastic) address works on multiple levels. First, it invites the Roman rulers to step outside their own perspective and to *see themselves*, as it were, "under the gaze of every eye," and observe what it is they are doing and how it might look to other people. They are asked to imagine how their recent activity is perceived, to look at themselves in a somewhat dispassionate way. They may also be asked here to try to perceive their activity with the hostility and skepticism of a spectator. They are certainly being indicted, but the choice of direct address in the indictment allows Tertullian to attempt to reorient their attention to themselves, and thus to illuminate their activity in a new way.

Second, assuming that he had a larger audience in mind than just the Roman rulers, Tertullian is *asking the reader to imagine this book confronting these high and lofty officials*, pointing out their injustices, malicious dealings, and refusal to act in public. He is encouraging the readers to see a different picture and to look at their officials as sitting not on the lofty judicial tribunal but rather in

22 All translations of Tertullian are taken from A. Roberts, J. Donaldson, and A. C. Coxe, eds., *The Ante-Nicene Fathers* (Volume III, first published 1885; reprinted by New York: Cosimo Classics, 2007), with some modifications.

the dock, against nothing more than a little book. In so doing he is painting a picture for his Christian and Carthaginian readers, drawing their attention by means of forensic and juridical address to the injustices of the “justice system” in place in Roman North Africa. The readers, therefore, are addressed here as the true judges of the proceedings. As I have previously argued, this rotation of perspective is a classic feature of courtroom scenes. When authors utilize courtroom imagery, both in narrative and rhetoric, they are begging the reader to take a judicial role in the proceedings.

In this context, at the beginning of the *Apologeticum*, this works in two ways. First, the audience of Roman rulers (if this is a real situation and not just an imagined one) is asked to judge not only “the real truth in regard to the charges made against the Christians,” but also implicitly asked to judge their own activity in failing to make this judgment up to this point. The Christian reader, on the other hand, is asked also to make a judgment against what has transpired, and against the Roman judges, seeing them for what they are, and thus perhaps really to be on the lofty tribunal rather than below in the dock.

Tertullian continues this strategy by focusing in on the figure of truth, coming by way of the humble book, standing before the Roman judges:

She [the truth] has no appeals to make to you in regard of her condition, for that does not excite her wonder. She knows that she is but a sojourner on the earth, and that among strangers she naturally finds foes; and more than this, that her origin, her dwelling-place, her hope, her recompense, her honours, are above. One thing, meanwhile, she anxiously desires of earthly rulers—not to be condemned unknown. What harm can it do to the laws, supreme in their domain, to give her a hearing? Nay, for that part of it, will not their absolute supremacy be more conspicuous in their condemning her, even after she has made her plea? (*Apol.* I.2–3)

Tertullian here continues to expand this imagined judicial scene by asking his readers to think about what it means for this little truth-book to face down these scary, scary judges with bravery and courage. The use of the feminine is notable here, as it heightens the contrast between the bravery of the *martus* and the lack of courage that he has already ascribed to the (presumably male) officials. It is certainly possible that Tertullian is asking his readers to recall the bravery of the females among them who have faced down officials in precisely this matter.²³ Even if this is not the case, however, he is painting a picture for

23 We do not know much about the church of Carthage until the appearance of the *Acts of the Scillitan Martyrs*, which gives us a date of 180 for the martyrdom of a group of

his readers of the small, humble female standing taller than the high-up males she faces. And he is pointing out the absurdity of the power contrast. All this little book wants is not to be condemned unknown—she's not even asking for acquittal, she just wants a hearing. The refusal of the rulers to give her one is mocked, since such a hearing will do nothing but *demonstrate* their absolute supremacy.

Tertullian then reminds the Roman rulers what will happen if they refuse to give her the hearing (all she wants is a hearing!): “But if, unheard, sentence is pronounced against her, besides the odium of an unjust deed, you will incur the merited suspicion of doing it with some idea that it is unjust, as not wishing to hear what you may not be able to hear and condemn” (*Apol.* I.3). Again, Tertullian is appealing to his readers to see the full picture: if the Roman rulers condemn without a hearing, they will “incur the merited suspicion” that they have done so because they are afraid that if they give a hearing, they will not be able to condemn the little book. What he is doing here is painting a picture of the Roman rulers as fearful, cowardly, too scared to hear what they will not be able to condemn. In doing so he is taking full advantage of the literary scenario implied by the genre: Tertullian is indicting the rulers for injustice, asking not only the Roman rulers to see the full picture, but also asking his wider readership more fully to understand what is going on here, to perceive the rulers as both unjust and terrified. He is thus asking his readership to judge the situation justly, to see more clearly, to realize the full implications of the events that are transpiring among them, to judge the judges.

In the courtroom scene drawn here, Tertullian is achieving two things at once: he is asking his readership to judge the judges, and he is also asking the Roman rulers to pass judgment on themselves. This is the moment where Tertullian leaves the picture, drawn in the third person, to make an explicit second-person address: “We lay this before you as the first ground on which we urge that your hatred to the name of Christian is unjust” (*Apol.* I.4). In some

Carthaginian Christians that included several females; obviously the most notable example of a female martyr from this provenance is Perpetua, whose *Passio* (along with Felicitas), one of the most popular martyr acts, is sometimes attributed (spuriously) to Tertullian himself. There is a significant literature on the female martyrs; see, for example, the recent studies by S. L. Cobb, *Dying to be Men: Gender and Language in Early Christian Martyr Texts* (New York: Columbia University Press, 2008); V. M. Limberis, *Architects of Piety: The Cappadocian Fathers and the Cult of the Martyrs* (New York: Oxford University Press, 2011), esp. chapter 4, “Gender and Martyr Piety”; A. Marjanen, “Male Woman Martyrs: The Function of Gender-Transformation Language in Early Christian Martyrdom Accounts,” in *Metamorphoses: Resurrection, Body, and Transformative Practices in Early Christianity* (ed. T. K. Seim and J. Økland; Berlin: de Gruyter, 2009), 231–47.

ways, this is the *nimshal*, if you were, the interpretive key to this metaphorical trial scene: the truth-book is nothing more than the *name* of Christianity, and “they” are actually “you”—so afraid of the name that you are committing injustice. This switch to the second person plural (*vos*), however, does not last long, as Tertullian returns immediately to a descriptive address, writing, “When men, then, give way to a dislike simply because they are entirely ignorant of the nature of the thing disliked, why may it not be precisely the very sort of thing they should not dislike? So we maintain that they are both ignorant while they hate us, and hate us unrighteously while they continue in ignorance, the one thing being the result of the other either way of it” (*Apol.* I.5). By talking about “men,” Tertullian once again plays with perspective, which has another double effect: asking the Roman rulers to look at themselves objectively, but also asking the wider readership to look at *them*.

Tertullian spends a good deal of the remainder of chapter one in this third-person description, demonstrating the injustice of “their” response to Christianity as well as “their” ignorant hatred of it. He explains that “the proof of their ignorance, at once condemning and excusing their injustice, is this, that those who once hated Christianity because they knew nothing about it, no sooner come to know it than they all lay down at once their enmity” (*Apol.* I.6) and became converts to Christianity themselves. He argues that the real reason that the judges refuse to give Christianity a hearing is the fear that they, too, will become Christians if they do so, or at least will recognize that their initial hatred was unjust and not be able to harbor those feelings any more (*Apol.* I. 9). He then raises a possible objection: just because many people have become Christians does not mean that Christianity is good, since many people make choices for evil all the time (*Apol.* I. 10). Conceding this point, Tertullian argues that the contrasting responses of “evil-doers” (*malefici*) and Christians to accusation and torture demonstrates the goodness of Christianity. Because “nature throws a veil either of fear or shame over all evil” (*Apol.* I.10), evil-doers cannot help but feel ashamed when they are caught. But this is not the case when it comes to accused Christians. Rather than, because of their shame, being anxious when caught, denying the accusations, and making excuses for their behavior as the *malefici* do (*Apol.* I.11), when a Christian is accused:

The only shame or regret he feels, is at not having been a Christian earlier. If he is denounced, he glories in it; if he is accused, he offers no defence; interrogated, he makes voluntary confession; condemned he renders thanks. What sort of evil thing is this, which wants all the ordinary peculiarities of evil—fear, shame, subterfuge, penitence, lamenting? What!

Is that a crime in which the criminal rejoices? To be accused of which is his ardent wish, to be punished for which is his felicity? You cannot call it madness, you who stand convicted of knowing nothing of the matter. (*Apol.* I. 12–13)

The return to the second person address here at the very end is striking, and returns the reader to the imagined trial scenario that Tertullian has set up in this opening to his *Apology*. What we have here is Tertullian telling the Roman rulers that by their actions they are being condemned; when they think they are condemning, they are acquitting, vindicating; *they think they are the judges, but they are really the accused*—and now they are the convicted.

3 Seeing the Full Picture: *Apologeticum* 17 and *De Spectaculis*

Tertullian mentions the divine courtroom for the first time in *Apol.* 17 as part of his positive demonstration of the nature of the God that the Christians worship. This is an important step in his response to the charge that Christians do not worship the gods (*Apol.* 10.1). This positive demonstration comes on the heels of chapter 16, in which Tertullian discusses and refutes the misconceptions regarding the nature of the Christian God. Tertullian deals with the claims that Christians worship an ass-head (*Apol.* 16.1), the cross itself (16.6), the sun (16.9), or some sort of mixed-beast monstrosity (16.12–13). At the end of this chapter Tertullian transitions to the next part of his argument by saying, “Having thoroughly cleared ourselves, we turn now to an exhibition of what our religion really is” (16.13).

This exhibition begins with a discussion of the nature of the One God, the object of Christian worship, starting with a positive affirmation of God’s creative activity: “The object of our worship is the One God, He who by His commanding word, His arranging wisdom, His mighty power, brought forth from nothing this entire mass of our world” (*Apol.* 17.1). Tertullian also expresses attributes of God in a combination of positive and negative formulation, saying that “He is invisible, though He is seen; incomprehensible, though revealed in grace; inestimable, though estimated by our human senses” (17.2).²⁴ This tension between the unknowable and the known is at the center of Tertullian’s exposition of God. Tertullian captures the idea that God can be and is known by everyone, even though he is transcendent, beyond human reach, and

24 My own translation (Lat: *Invisibilis est, etsi videatur; incomprehensibilis, etsi per gratiam representetur; inaestimabilis, etsi humanis sensibus aestimetur*).

impossible fully to comprehend. Tertullian contends in somewhat of an ontological argument that “this it is which gives some notion of God, while yet beyond all our conceptions—our very incapacity of fully grasping Him affords us the idea of what He really is. He is presented to our minds in His transcendent greatness, as at once known and unknown” (17.3). Part of our ordinary human faculties, argues Tertullian, naturally recognize God.²⁵ And it is because of this natural knowledge of God that “this is the crowning guilt of men, that they will not recognize one of whom they cannot possibly be ignorant” (17.3).²⁶ Nothing can excuse people from being ignorant of God.

Having asserted this inherent knowledge of God, Tertullian then turns back to second-person address to ask a question laced with irony and absurdity: “Would you have the proof from the works of His hands, so numerous and so great, which both contain you and sustain you, which minister at once to your enjoyment, and strike you with awe; or would you rather have it from the testimony of the soul itself?” (*Apol.* 17. 4–5). Here the audience are addressed directly in their capacity as judges, but they are mocked, asking for proofs when they should be listening to their very soul, because the soul, even though it is stuck in the oppressive bondage of the body and is a slave to false gods (17. 5), bears witness to God when it wakes to its natural state:

It bears witness, too, that God is judge (*iudicem quoque contestatur*), exclaiming, ‘God sees,’ and ‘I commend myself to God,’ and ‘God will repay me.’ O noble testimony of the soul by nature Christian! Then, too, in using such words as these, it looks not to the Capitol, but to the heavens. It knows that there is the throne of the living God, as from Him and from thence itself came down. (*Apol.* 17. 6)

The soul’s testimony, argues Tertullian using juridical language, includes the proper confession of God, and that proper confession of God includes the identification of God as judge. Recognizing God as judge itself entails an assertion of God’s all-encompassing vision, the proper human response, and the promise

²⁵ For the much fuller version of this argument, cf. Tertullian, *De Testimoniis Animae*.

²⁶ On the themes of *occulta* and *manifesta* as they relate to the argument of the *Apologeticum* as a whole, see T. Georgas, “*Occultum* and *Manifestum*: Some remarks on Tertullian’s *Apologeticum*,” in *Continuity and Discontinuity in Early Christian Apologetics* (ed. J. Ulrich, A.-C. Jacobsen, and M. Kahlos; Frankfurt am Main: Peter Lang, 2009), 35–48; R. Sider, “On Symmetrical Composition in Tertullian,” *JTS* 24 (1973): 405–23.

of future requital. Here, the soul testifies before a courtroom presided over by the real judge—not in the Capitol but in the heavens.²⁷

It is crucial for the readership here to see the big picture. “God sees” is a crucial part of Tertullian’s understanding of God, and is part and parcel of God’s judicial authority. Those Roman rulers on their lofty tribunals are asked to remember—and so is the wider readership—that they are not the loftiest rulers around; their gaze is not as all-encompassing as that of God; look not to the Capitol, look to the heavens. Listen to the witness which your very soul—Christian by nature—is bearing for you. By incorporating the imagery of the divine courtroom here, Tertullian is asking his readers to take a step back and focus a wider lens on the judicial process. They may think they are the judges (or the readership may think the Roman rulers are the judges), but really they are the defendants in a much larger trial scenario.

This use of divine courtroom imagery, particularly as it relates to vision and true understanding of what is going on beyond one’s immediate perception of judgment, is found also in Tertullian’s treatise *De Spectaculis*, likely written in the same year. Written to a Christian readership in North Africa, Tertullian argues in *De Spectaculis* that it is not proper for Christians to attend the games and spectacles of the Roman arena. After arguing his case from Scripture, including a notable exegesis of Psalm 1 (*De Spec.* 3), and describing the idolatrous origins of the games (*De Spec.* 5–13), Tertullian appeals to his Christian readers by claiming that the games excite passions, including rivalry, rage, wrath, and immodesty, that are inappropriate and incompatible with the values of Christian life laid down by God (*De Spec.* 15–17). Tertullian argues that it is not just the games and circuses that are forbidden for Christians, but the amphitheatre as well:

It is good, no doubt, to have the guilty punished. Who but the criminal himself will deny that? And yet the innocent can find no pleasure in another’s sufferings: he rather mourns that a brother has sinned so heinously as to need a punishment so dreadful. But who is my guarantee that it is always the guilty who are adjudged to the wild beasts, or to some other doom, and that the guiltless never suffer from the revenge of the judge, or the weakness of the defence, or the pressure of the rack? How much better, then, is it for me to remain ignorant of the punishment inflicted on the wicked, lest I am obliged to know also of the good coming to untimely ends—if I may speak of goodness in the case at all!

27 If the real judge is not even in the Capitol, how much less might he be found in the provinces.

At any rate, gladiators not chargeable with crime are offered in sale for the games, that they may become the victims of public pleasure. Even in the case of those who are judicially condemned to the amphitheatre, what a monstrous thing it is, that, in undergoing their punishment, they, from some less serious delinquency, advance to the criminality of manslaughter! But I mean these remarks for heathens. As to Christians, I shall not insult them by adding another word as to the aversion with which they should regard this sort of exhibition; though no one is more able than myself to set forth fully the whole subject, unless it be one who is still in the habit of going to the shows. I would rather withal be incomplete than set memory a-working. (*De Spec.* 19)

Several aspects of this section are of note here. First, Tertullian's assertion that punishing the guilty is a good is foundational to his understanding of the way justice should operate, and the way God's justice does operate, as becomes clear in his work refuting Marcion.²⁸ Tertullian's problem is not with the punishment—not even if the punishment is death. Rather, he thinks that taking pleasure in the punishment of another is not a Christian virtue. Moreover, Tertullian recognizes that the Roman judicial system is a flawed one, because it is not always the case that the punished is truly guilty. He gives several examples here of how the Roman judicial system could fail to produce accurate verdicts. Tertullian does not want his constituency to have faith in the Roman imperial judicial apparatus, so much faith that they feel it is morally acceptable for them to cheer when the condemned are literally torn to pieces in the amphitheatre. He reminds them of just how unreliable that system is, and that they may be cheering at the heinous suffering of a totally innocent person. He then adds another argument, relating to the proportionality of the crime and the suffering. Tertullian argues that sometimes people are sentenced to the amphitheatre disproportionately, and that the sentence forces them to commit more heinous crimes than they previously had, raising them to a new level of criminality. This is yet another way, for Tertullian, of the way the Roman judicial system produces unjust outcomes, and why Christians must avoid attending these spectacles.

Immediately following this section of argument, Tertullian forces the readers to turn their attention on themselves, and the position into which they are unwittingly putting themselves by attending such monstrous events. He sneaks in this shift of focus by beginning his next section with a response to the

28 As I have already demonstrated. Cf. Kensky, *Trying Man, Trying God*, 284–92.

criticism posed by those who say that since Scripture does not explicitly *forbid* attending these events, it is then *permissible* for Christians to attend them:

How vain, then—nay, how desperate—is the reasoning of persons who, just because they decline to lose a pleasure, hold out that we cannot point to the specific words or the very place where this abstinence is mentioned, and where the servants of God are directly forbidden to have anything to do with such assemblies! I heard lately a novel defence of himself by a certain play-lover. The sun, said he, nay, God Himself, looks down from heaven on the show, and no pollution is contracted. Yes, and the sun, too, pours down his rays into the common sewer without being defiled. As for God, would that all crimes were hid from His eye, that we might all escape judgment! But He looks on robberies too; He looks on falsehoods, adulteries, frauds, idolatries, and these same shows; and precisely on that account we will not look on them, lest the All-seeing see us. You are putting on the same level, O man, the criminal and the judge; the criminal who is a criminal because he is seen, and the Judge who is a Judge because He sees. (*De Spec.* 20)

Tertullian uses this objector as a decoy, creating a diversion so that the readers will focus attention on this unnamed man and his argument. At that point, Tertullian pulls the wool from his readers' eyes and compels them to focus attention on themselves and the role they are playing by attending these spectacles. Here he forces them to realize that they are not just spectators at the spectacle, not just an audience watching and cheering on the action, but they are also always *being watched* by the ultimate judge. They might think that they are just bystanders, but Tertullian reminds them subtly that they, too, are the object of spectacle from one whose vision far exceeds their own. Like the man whose death they cheer, they will have to answer to a judge. In their case, however, it will be a judge from whom they cannot hide, and their charges will include everything they have ever done, not just violations of Roman law.

Harry Maier has discussed insightfully the effect of this type of literary maneuver by early Christian authors. Focusing his attention for the most part on apocalyptic narrative, Maier argues that “this literature repeatedly presents humans as spectacles, actors under God’s eye whose deepest thoughts and most secret actions are visible to the divine *speculator* or surveillant. Appeals to divine omniscience serve apologetics as a defense of the justice of God. They also achieve, however, a more immediate effect. Belief that one acts, to quote

Octavius, 'under God's eye,' is powerfully paraenetic."²⁹ The paraenetic effect, on which Tertullian relies here, is achieved because these scenes force the audience to think of themselves not as spectators but as the objects of speculation. As Maier explains, "dressed up in apocalyptic costume, audiences not only see themselves, but more importantly encounter themselves as God sees them."³⁰ This is all the more potent given the fact that Tertullian has also included in this passage the reminder that God is not going to view them as passive spectators, but as active judges, and thus they will be seen as criminals. The audience is here invited to view themselves from this vantage point, in effect to act as their own spectators, their own judges, and to pronounce judgment on what they look like, especially here when they attend the amphitheatre and arena.

Maier notes that Tertullian plays with this change of perspective throughout the latter half of *De Spectaculis*. He invites the reader, for example, to "think how it fares with you in heaven," asking them "do you doubt that the angels are looking down from above, and marking every man, who speaks and who listens to the blaspheming word, who lends his tongue and who lends his ears to the service of Satan against God?" (*De Spec.* 27). Tertullian links the concept of spectacle and judgment, arguing that the watchers are the watched, and this will culminate in the ultimate spectacle:

But what a spectacle is that fast-approaching advent of our Lord, now owned by all, now highly exalted, now a triumphant One! What that exultation of the angelic hosts! What the glory of the rising saints! What the kingdom of the just thereafter! What the city New Jerusalem! Yes, and there are other sights: that last day of judgment, with its everlasting issues; that day unlooked for by the nations, the theme of their derision, when the world hoary with age, and all its many products, shall be consumed in one great flame! How vast a spectacle then bursts upon the eye! What there excites my admiration? what my derision? which sight gives me joy? which rouses me to exultation?—as I see so many illustrious monarchs, whose reception into the heavens was publicly announced, groaning now in the lowest darkness with great Jove himself, and those, too, who bore witness of their exultation; governors of provinces, too, who

29 H. O. Maier, "Staging the Gaze: Early Christian Apocalypses and Narrative Self-Representation," *HTR* 90 (1997): 132; quoting Minucius Felix, *Octavius* 32.9. For discussion of the relationship between the *Octavius* and the *Apologeticum*, see M. Hardwick, *Josephus as a Historical Source in Patristic Literature Through Eusebius* (BJS 128; Atlanta: Scholars Press, 1989), esp. chapter three.

30 Maier, "Staging the Gaze," 146.

persecuted the Christian name, in fires more fierce than those with which in the days of their pride they raged against the followers of Christ. What world's wise men besides, the very philosophers, in fact, who taught their followers that God had no concern in ought that is sublunary, and were wont to assure them that either they had no souls, or that they would never return to the bodies which at death they had left, now covered with shame before the poor deluded ones, as one fire consumes them! Poets also, trembling not before the judgment-seat of Rhadamanthus or Minos, but of the unexpected Christ! (*De Spec.* 30.1–4)

Tertullian here invites the audience to await the *true* spectacle, the final judgment and the culmination of history, which will be so much better than all the spectacles they currently attend, not least because of the ironies involved. It is somewhat jarring to feel the glee and satisfaction in Tertullian's tone here, because he had appealed to the noble instincts of Christians earlier in the treatise. Tertullian seems to be suggesting that even the ignoble instincts, such as rejoicing at the suffering of others and being happy to see the guilty punished, have their appropriate time and place, and Christians just haven't reached that point yet.³¹ Maier, writing on this passage, says that it "pulls one, often unwittingly, out of one's seat into the final act. Rendered visible in the narrative world by becoming object of the divine gaze, terrible enough as only an act of one's own imagination can be, selves take shape for performance."³² Tertullian is thus able to accomplish change in the present by forcing the audience to watch themselves in the future and see the trajectories made possible by their actions. As Maier explains, "Having replotted the end, Tertullian reshapes the present as well."³³

This is an effective hortatory strategy, especially concerning the effect of the juxtaposition of the description of the failures of the imperial judicial apparatus (*De Spec.* 19) and the depiction of God as Judge found throughout the latter half of *De Spectaculis*, which culminates in this depiction of final judgment and spectacle. Tertullian spends a whole section of the text forcing his readers to confront the realities of the imperial judicial system and all the ways in which cases can lead to unjust verdicts, including having a vengeful judge.

31 Elizabeth Castelli describes this as the creation of a Christian "counterspectacle." Cf. the excellent discussion in her *Martyrdom and Memory: Early Christian Culture Making* (New York: Columbia University Press, 2004), 104–33.

32 Maier, "Staging the Gaze," 154.

33 Ibid.

He even at one point warns Christians to consider what would happen if *they* found themselves caught up in this process:

We ought to detest these heathen meetings and assemblies, if on no other account than that there God's name is blasphemed—that there the cry 'To the lions!' is daily raised against us—that from thence persecuting decrees are wont to emanate, and temptations are sent forth. What will you do if you are caught in that heaving tide of impious judgments? Not that there any harm is likely to come to you from men: nobody knows that you are a Christian; but think how it fares with you in heaven. For at the very time the devil is working havoc in the church, do you doubt that the angels are looking down from above, and marking every man, who speaks and who listens to the blaspheming word, who lends his tongue and who lends his ears to the service of Satan against God? (*De Spec.* 27)

Tertullian here deliberately invites Christians to think of the judgments that await them with God as in some way analogous to, and even worse than, the judgments processed in the pagan assemblies. By begging the comparison, Tertullian is asking the reader to imagine what God's judicial system will be like, how much worse it could possibly be than that of the Romans. He is capitalizing on their fear of the Roman judicial system to encourage them to fear God's judicial system as well.

Tertullian's goal is to get his Christian audience to think twice about what they are doing and stop participating in the spectacles. He has reminded them that in the Roman judicial system, punishments are often disproportionate to the crimes, and left the possibility open for them to think that this could also be true if God, the ultimate judge, finds himself angry at them. He has reminded his readers that cases in the Roman courtroom can turn on a judge seeking revenge, and allowed them to contemplate this possibility when it comes to a divine courtroom as well. Tertullian's description of the spectacle of final judgment asks the reader to see what will happen to those pagans who find themselves in the divine courtroom—and forces the readers to imagine what will happen to them if they continue on their current path. Tertullian plays with the discursive space in the readers' imaginations. He cultivates fear in his audience and subtly encourages them to use that fear in imagining the proceedings in the divine courtroom.

This is very similar to what is going on in the *Apologeticum*, except here the implied addressees are the Roman judges themselves. They, too, are asked to imagine the higher authority to whom they must answer; they are asked

to think about the fact that they are being watched, and it is indeed this all-seeing vision that he hopes will give them pause.³⁴ In addition, this idea that the Roman rulers are the ones being watched is meant to give consolation and comfort to his wider readership. They are asked to imagine what the activities of the rulers look like under the gaze of the divine eye. This will perhaps bolster their confidence when under duress and renew their resolve.

This is important, because despite what the martyr acts might have us believe, there is ample evidence to show that not everyone was volunteering for martyrdom, and people were definitely wavering under persecution. This is clear from Tertullian's later treatise, *De Fuga in Persecutione* (discussed below), as well as from other pieces of early Christian literature. In Origen's *Exhortation to Martyrdom*, for example, Origen uses this exact strategy of seeing the bigger picture to exhort Christians not to buckle under the threat of judicial persecution.³⁵ One of the issues that seems to be of immediate concern to Origen, as it constitutes a major bulk of the treatise, is the question of whether or not Christians should lie and swear before their judges that they are not Christians. Using passages from scripture, Origen warns his readers that they will have to answer on the day of judgment for every careless word they say, and that nothing is more careless than an improper oath (*Mart.* 7). Origen repeatedly exhorts his readers to maintain calm, and if they cannot do that, to "at least let not the disquiet of the soul be poured forth or appear to strangers" (*Mart.* 5). To "quiet the soul," Origen asks his readers to remember the judgment to come, and what this means for them in the present.

As an example of the endurance required in the face of certain death, Origen discusses the way Eleazar faced death in 2 Maccabees, arguing that "it would be appropriate for us, as well, in such circumstances to use their words to those behaving this way and to say, 'The Lord God is watching over us and in truth has compassion on us' (2 Macc 7:6)" (*Mart.* 22).³⁶ This appeal to the

34 Another example of utilizing this type of move in apologetic literature is Theophilus of Antioch. Noting how even the sayings of the poets corroborate the Christian message, he notes "that God sees all, and that nothing escapes His notice, but that, being long-suffering, He refrains until the time when He is to judge—concerning this, too, Dionysius said, 'The eye of Justice seeing all, Yet seemeth not to see' " (*Ad. Aut.* 2.37).

35 The treatise, the occasion of which seems to be the persecution of Maximinius Thrax in Caesarea Maritima, is dated to approximately 235 CE and addressed to Ambrose and Protocletus, but probably assumes a wider readership.

36 Translation from R. Greer, *Origen* (New York: Paulist Press, 1979). For discussion of the use of the example of Eleazar, see J. W. van Henten, "The Christianization of the Maccabean Martyrs: The Case of Origen," in *Martyrdom and Persecution in Late Antique Christianity: Festschrift Boudewijn Dehandschutter* (ed. J. Leemans; Leuven: Peeters, 2010), 333–51.

watchful eye of God is designed to comfort his readers and reassure them that God will remember them, but it is also designed to remind Christians that if they swear falsely when at a tribunal, they will not escape God's notice. Origen thus uses the same strategy as Tertullian of requiring his readers to step back and see the big picture and use that as a motivation for action in the present. He thus attempts to renew the resolve of his readers, and to "quiet" their souls. Readers are asked fully to comprehend what is transpiring and how it might look from the perspective of God. They are asked, in effect, to pass judgment on themselves and to make the appropriate course corrections before it is too late. Like Tertullian, Origen tries to quiet the souls of his readers by reminding them who is really to be feared.

Tertullian uses this strategy of asking his readers to "see" the real courtroom at work several times again in the *Apologeticum*, notably at *Apol.* 45, at the close of the main refutation of the charges.³⁷ Concluding his refutation of the charge of treason (28–45), Tertullian asserts that "we then, alone, are innocent (*nos ergo soli innocentes*)" (*Apol.* 45.1). "We" have been taught our innocence by God, insists Tertullian, but "you" learned your ideas about innocence from the authority of man (45.2). Therefore, the Christians have the deeper law, the more thorough law, the rule of life that leads to true innocence (45.2–4). This rule of life has true authority behind it. Tertullian closes this section by comparing the limited scope of the authority of human laws with those of God:

But what is the real authority of human laws, when it is in man's power both to evade them, by generally managing to hide himself out of sight in his crimes, and to despise them sometimes, if inclination or necessity leads him to offend? Think of these things, in the light of the brevity of any punishment you can inflict, never to last longer than till death. On this ground Epicurus makes light of all suffering and pain, maintaining that if it is small, it is contemptible; and if it is great, it is not long-continued. No doubt about it, we who receive our awards under the judgment of an all-seeing God (*Enimvero nos qui sub deo omnium speculatore*), and who look forward to eternal punishment from Him for sin—we alone may occur to be innocent (*soli innocentiae occurimus*) since, under the influence of our fuller knowledge, the impossibility of concealment, and the greatness of the threatened torment, not merely long-enduring but everlasting, we fear Him, whom he, too, should fear who the fearing judges—even God, I mean, and not the Proconsul. (*Apol.* 45.5–7)

37 Chapter 46 begins the concluding section of the text, the *peroratio*.

Tertullian ends the main section of the *refutatio* with an eschatological bang. He contrasts the limited scope of human judgment and punishment with that of the divine and the eternal, explicitly asking his readers to think about this, to reorient their thoughts, to see the big picture—not only in terms of the final judgment that awaits them, but also in terms of what this means for the proper object of fear. What is a proconsul when compared with God? It is God, the ultimate spectator, from whom one can conceal nothing, who should truly be feared. This reiterates the point that Tertullian made in chapter 17—don't look to the Capitol, look to the heavens! Recognize what is going on, see the big picture, and be appropriately afraid. Though Tertullian speaks here in the second person, he is not just talking to the Roman rulers. He is addressing also the wider readership who may themselves need to be reoriented.³⁸ That Christians don't always see the big picture is clear from *De Spectaculis* and other internal apologetics. This is a meaningful reorientation for Tertullian's Christian readership as well as his pagan addressees. Why fear a judgment from a provincial governor, whose jurisdiction is not only confined to the human realm, but also to a limited geographical area? And why fear such judges considering that they, too, will be subject to an all-encompassing and everlasting judgment? Fear *that*, says Tertullian, not the authority of man.

4 Judging the Judges: *Apologeticum* 23–24

One effect of this “textual panopticism”³⁹ is that by asking readers to see the big picture, and to see who is really being watched and judged, not from their position outside of Carthage but from a much higher surveillance post, Tertullian is effectively rotating the courtroom so that the judges are no longer the judges but instead are the judged. This was already the effect of the implied courtroom scenario of the apologetic situation, with the readers in the judicial position; now we have a situation of courtrooms inside of courtrooms. The readers were already asked to make a deliberation in the case Tertullian was presenting before them; now they are asked to see themselves as the ultimate defendants in a case much larger than them. In this case, too, they are asked to make a judgment, assessing their own actions in order to determine whether

38 Tertullian makes a similar contrast between God and the proconsul in *Ad Martyres* 2, addressed to Christians in prison awaiting persecution. He writes that it is truly *the world* which is the prison, and it is the whole human race who are truly criminals: “Then, last of all, it awaits the judgment, not of the proconsul but of God.”

39 Maier, “Staging the Gaze,” 140.

a course correction is necessary. Tertullian's invocation of the divine courtroom inside this fictive courtroom scenario has effectively turned his readers into judges, defendants, and then judges again. Just as in *De Spectaculis*, the readers are asked to put themselves under the gaze of the ultimate spectator and then, in a sense, to become the ultimate spectator in order to judge themselves. Here also, however, his wider readership is asked to turn the spectacles upon the Roman rulers and imagine how *they* will look and hold up under this examination.

While his wider readership may not need *too* much convincing that they will all be judged at a grand assize, certainly this is not a point that the Roman rulers are prepared to concede. Tertullian thus attempts to argue this position at several points throughout the *Apologeticum*, notably at *Apol.* 23–24. After positively affirming the attributes of the God the Christians worship (*Apol.* 17–21), Tertullian goes on the offensive, arguing that the gods the pagans worship are actually demonic spirits (*Apol.* 22–24). He begins this argument by affirming the existence of spirits whom the philosophers call demons (*Apol.* 22.1), appealing to pagan exempla such as Socrates, “all the poets,” and Plato to make this case. He argues that “their work is the ruin of man” (*operatio eorum est hominis eversio*): they are responsible for maladies such as illnesses, crop destruction, and corruption of the mind (22.4–6), and their greatest “fare,” turning man away from the true God (22.7). Tertullian then explains how they work, by fitting in to certain oracles, and treating certain diseases, thus tricking people into thinking that they are benevolent and kind (22.8–12).

Tertullian continues this line of argument through the beginning of chapter 23, at which point he turns to a “demonstration” of his point:

But this far we have been dealing only in words; we now proceed to a proof of facts, in which we will show that under different names you have real identity. Let a person be brought before your tribunals, who is plainly under demoniacal possession. The wicked spirit, bidden to speak by a follower of Christ, will as readily make the truthful confession that he is a demon, as elsewhere he has falsely asserted that he is a god. (*Apol.* 23.4)

In this imagined tribunal, Tertullian's “proof” for what he has just been arguing, demons are not capable of lying to Christians. Tertullian is willing to bet Christian blood on it—if any of these demons (he even identifies *Virgo Caelestis* by this title) refuse to confess that they are demons, kill the Christian to whom they are confessing on the spot (23.6). Demons are incapable of lying to Christians because “they would not dare to disrespect the higher majesty of beings, whose displeasure they would feel was to be dreaded” (23. 9).

Just like in the Gospels, when demons cannot help but confess Christ, here they cannot help but confess God in the face of Christian inquisitors.

Likewise the demons cannot help under this kind of judicial questioning but affirm the real truth about Christ himself, that he was not a common man or a magician, not down among the dead. He imagines the mockery of his opponents at this Christian claim: “But at once they will say, Who is this Christ with his fables? Is he an ordinary man? Is he a sorcerer? Was his body stolen by his disciples from its tomb? Is he now in the realms below?” (*Apol.* 23.12). But Tertullian offers an alternate suggestion: “Or is he not rather up in the heavens, thence about to come again, making the whole world shake, filling the earth with dread alarms, making all but Christians wail—as the Power of God, and the Spirit of God, as the Word, the Reason, the Wisdom, and the Son of God?” (23.12). “Mock as you like,” continues Tertullian, “but get the demons if you can to join you in their mocking; let *them* deny that Christ is coming to judge every human soul which has existed from the world’s beginning, clothing it again with the body it laid aside at death; let *them* declare it, say, before your tribunal, that this work has been allotted to Minos and Rhadamanthus, as Plato and the poets agree; let them put away from them at least the mark of ignominy and condemnation” (23.13). Here Tertullian returns to that tribunal imagery, this time in explicit contrast between their tribunal and the one that matters—the one that will convene when Christ shows up. Building on imagery from the gospels, in which the demons cannot help but make christological confession, he asks the “readers” to try to imagine what would happen if they got the demons in the dock and forced them to make judicial confession. They too would “have” to act like Christians—confessing Christ! “Let them deny,” he continues, “that, for their wickedness condemned already, they are kept for that very judgment-day, with all their worshippers and their works” (23.14). He also challenges the mocking of the opponents by reminding them that post-mortem judgment imagery shows up in their texts as well—notably in Platonic myth, with Minos and Rhadamanthus acting as judges.⁴⁰

40 This comparison to Platonic myth is somewhat of a topos in apologetic literature. It appears in Justin Martyr, *First Apology* 8; Athenagoras, *Embassy for the Christians* 12; cf. also Tertullian, *De Spec.* 30.4 and *Ad Nat.* 1.19.6. For a discussion of the Platonic myths themselves, see Kensky, *Trying Man, Trying God*, chapter 3. Tertullian indicates elsewhere that Christians were mocked and laughed at for believing there would be a final judgment. In *Apol.* 47.12, for example, Tertullian writes that “Accordingly, we get ourselves laughed at for proclaiming that God will one day judge the world. For, like us, the poets and philosophers set up a judgment-seat in the realms below. And if we threaten Gehenna, which is a reservoir of secret fire under the earth for purposes of punishment, we have in the same

Tertullian is making an implicit comparison here between the ease with which demons can be compelled to confess the truth and the difficulty with which Christians—faced with the specter of torture—can be convinced by the Romans to deny Christ. According to Tertullian, “all this sovereignty and power that we have over them is from our naming of Christ, and recalling to their memory the woes with which God threatens them at the hands of Christ as Judge, and which they expect one day to overtake them” (23.15). The force comes from the truth, not from flogging or judicial torture.⁴¹ Here the demons are afraid “of Christ in God and of God in Christ,” and, unlike the Roman rulers, they know what is to come and have the proper attitude toward it. The demons can see the full picture; the Romans cannot. Tertullian thus turns the tables on what seems to have happened (at least from the “transcripts” of the martyr-trials) when Christians refused to deny the name of Christ before Roman tribunals. From a human perspective, the Romans affirm their authority and power when Christians confess the name before their accusers. But Tertullian insists that, actually, it is the Christians who have power—even over the demons—*because of their very name*. And if they have power over the demons, how much the more so do they have power over the Romans!

This imagined tribunal continues into chapter 24, in which Tertullian argues that the confession of these beings that they are not gods “is quite sufficient to clear us from the crime of treason, chiefly against the Roman religion” (*Apol.* 24.1), since if there are no gods, there can be no religion, and if there is no religion, then they cannot be guilty of injuring religion (24.1). He then once again turns the tables on his accusers, casting them as defendants: “The charge recoils on your own head: worshipping a lie, you are really guilty of the crime you charge on us, not merely by refusing the true religion of the true God, but by going the further length of persecuting it” (*Apol.* 24.2). Here, Tertullian suggests that it is not the Christians but truly their pagan persecutors who are guilty of the charge of sacrilege. He begins here to engage in another type of usage of divine courtroom imagery, familiar from the Gospel of John. Tertullian

way derision heaped on us. For so, too, they have their Pyriphlegethon, a river of flame in the regions of the dead.”

- 41 On the types of judicial torture used by the Romans and their effects on Christians, see the incisive article by B. Shaw, “Judicial Nightmares and Christian Memory,” *J ECS* 11 (2003): 533–63. An ancient depiction can be found in Cyprian, who describes these judicial tortures as part of his *ekphrasis* in *Ad Donatus* 10. Discussion of Cyprian’s *ekphrasis* can be found in S. Goldhill, “The Erotic Eye: Visual Stimulation and Cultural Conflict,” in *Being Greek Under Rome: Cultural Identity, the Second Sophistic, and the Development of Empire* (ed. S. Goldhill; Cambridge: Cambridge University Press, 2001), 154–94.

seems to be suggesting that actually the divine courtroom is *occurring right now*, and people condemn or acquit themselves by their own actions. Though here this is just hinted at, this thread becomes increasingly important in the *Apologeticum*, culminating in the final words of the whole treatise: “On this account it is that we return thanks on the very spot for your sentences. As the divine and human are ever opposed to each other, when we are condemned by you, we are acquitted by the Highest (*u test aemulatio divinae rei et humanae, cum damnatur a vobis, a deo absolvimur*)” (*Apol.* 50.16). The decision of the Roman rulers to find the Christians guilty of charges of which the rulers themselves are truly guilty results in the *real* condemnation of *the Romans*, not the Christians; it is the Christians who are truly acquitted.⁴²

This type of divine courtroom imagery appears to great effect in a later work by Tertullian, *De Fuga in Persecutione*.⁴³ Attempting to persuade his audience *not* to flee in times of persecution, times of danger, and times of possible imminent martyrdom, Tertullian asks his Christian readership to think about the nature of persecution and what it really means:

Let us come, then, to the nature of persecution; at the outset, let me say that it never happens without God willing it, and it is fitting—even, at times, necessary—for Him to do so, to the approval or condemnation of His servants. For, what is the result of a persecution, what finally is its effect, if not the approval or condemnation, when God puts the faith of

42 In her study of the martyr acts, Candida Moss suggests that one of the benefits of martyrdom was that the martyr was thought to escape the heavenly tribunal altogether: “The martyrs circumvent the all-consuming eschatological fire, the fires of Hades, and even the heavenly tribunal itself. Their exceptional status when it comes to judgment means that they face neither the fires of Hades nor the judgment by God.” C. Moss, *The Other Christs: Imitating Jesus in Ancient Christian Ideologies of Martyrdom* (New York: Oxford University Press, 2010), 143–44. Moss’ examples, however, seem to conflate “judgment” with “punishment”—it is not clear that martyrs were thought to escape the divine courtroom, though they certainly were expected to evade eternal Hades. In fact, what seems to be going on here is a different—possibly Johannine-infused—understanding of the divine courtroom, in that it is taking place already.

43 Possibly dated to 212 CE, during the period when Scapula was governor, and after Tertullian had become influenced by the New Prophecy. Cf. Sider, *Christian and Pagan in the Roman Empire*, 140 n. 6. This is a slight revision of Barnes, who offered a date of 208–9 CE (Barnes, *Tertullian*, 46–47). As Droge and Tabor note, though this text seems to be written during his Montanist period, the position taken on persecution is similar to that expressed in *Scorpiace*. A. Droge and J. Tabor, *A Noble Death: Suicide and Martyrdom Among Christians and Jews in Antiquity* (New York: HarperSanFrancisco, 1992), 147.

His children to the test? In this sense, then, a persecution is a judgment, and the verdict is either approval or condemnation. To be sure, to God alone it belongs to judge, and this is His winnowing fan which even now cleanses the Lord's threshing floor—His church, winnowing the mixed heap of the faithful and separating the wheat of the martyrs from the chaff of the cowards. This judgment, too, is the ladder of which Jacob dreamed, on which some are ascending on high, while others descend below. (*De Fug. Per.* 1.3–4)

Tertullian here redefines persecution for his readers. Again asking them to see the big picture and the true location of their actions within it, Tertullian asks his readers to understand that persecution is, in fact, a judgment, and they are already being condemned or approved by their actions before God, the true Judge. The belief that the divine courtroom is currently in session comes from the Gospel of John, in which people by their own actions are condemning or acquitting themselves in the cosmic trial being held all around them.⁴⁴

This usage of divine courtroom imagery inside a piece of apologetic literature has an additional literary effect. As I have already argued, in an apology the readers are effectively put in the judicial position, and asked to pass judgment on the “case” presented before them. Here, they are asked not only to find the Christians innocent but also the Roman rulers truly guilty. Here, however, an additional layer is added. The readers are also asked to recognize that in some way the Christians have already been found innocent, and the Romans are already proving themselves guilty. Therefore, what the readers are asked to do is not only to render a judicial verdict, but also to “read” the verdict already proffered and thus align themselves with it—in other words, they are asked to become co-jury with God. Their vision and perspective asks them to identify with the divine judge himself, and to see themselves in some way as “on God's side” and to identify with God in this fashion. In other words, this use of the divine courtroom strategy asks the readers to align themselves with God and join God's judicial team.

Part of seeing the full picture and being able to align oneself with God involves proper recognition of what is *really* going on in these “trials” of Christians, and who is *really* behind them. In chapter 27 Tertullian, in second person address, informs the Roman rulers that Christians (“we”) know who the object of Roman sacrifice is, and who is really behind the instigation of all these matters:

44 For discussion, see Kensky, *Trying Man, Trying God*, 223–42.

We know whence some suggestions come, who is at the bottom of it all, and how every effort is made, now by cunning suasion, and now by merciless persecution, to overthrow our constancy. No other than that spirit, half devil and half angel, who, hating us because of his own separation from God, and stirred with envy for the favour God has shown us, turns your mind against us by an occult influence, moulding and instigating them to all that perversity in judgment, and that unrighteous cruelty, which we have mentioned at the beginning of our work, when entering on this discussion. (*Apol.* 27.3–4)

Tertullian suggests—insists?—here that the Romans are not even autonomous in their own actions, but they are acting at the instigation of the devil in their decision to undertake these judicial persecutions. He is reminding the readership that they should not think that the Romans are here acting in a way that is meaningful on anything less than a cosmic plane—the very fact that these persecutions are taking place suggests how seriously the Christian message should be taken! The Christians should almost pity their Roman rulers for being subject to this, and should see the full picture themselves, understanding who *really* is behind these trials, and what role the Christian defendants are *really* playing by bearing witness to the name of Christianity.⁴⁵

It seems unlikely that Tertullian's Roman ruler addressees would have been receptive to this message. This is an example of how the *Apologeticum* speaks also—if not primarily—to a wider audience of readers. It is not really crucial for the Roman rulers to accept this; what is crucial is that the Christian readers are able to see the full picture and understand that even the great Romans are participants in a cosmic drama that is bigger than them. They are asked here to see the Romans as objects of pity, pawns even, and to look upon them in a particular way. The purpose of this is for them to exercise their judgment in diagnosing all that is going on around them, effectively to judge their judges, and then to use that judgment as criteria for determining proper action and attitude in the future—as proper to the goal of deliberative oratory. It is the wider perspective that Tertullian provides that allows readers to participate in this way.

45 Moss notes that the assertion that the devil is behind the persecution of Christians becomes a popular theme especially in the Latin martyr acts, where the Romans are sometimes portrayed as agents of the devil. See Moss, *Other Christs*, 88–102.

5 Concluding: The Peroratio (*Apol.* 46–50)

In chapters 46–50 of the *Apologeticum*, Tertullian brings together all the strands of his discourse by means of an extensive comparison of Christianity with ideas in Greek and Roman philosophy. *Apol.* 46, coming right after the eschatological end of 45, starts with a transitional clause that signals the end of Tertullian's response to the charges being leveled against Christians: "We have sufficiently met, as I think, the accusation of the various crimes on the ground of which these fierce demands are made for Christian blood. We have made a full exhibition of our case; and we have shown you how we are able to prove that our statement is correct, from the trustworthiness, I mean, and antiquity of our sacred writings, and from the confession likewise of the powers of spiritual wickedness themselves" (*Apol.* 46.1). Tertullian then proceeds to compare positively the doctrines of Christianity with philosophy. Notably, Tertullian makes repeated mention of Socrates and his condemnation in this section (*Apol.* 46.5–6; 46.10), perhaps reminding his readers that it would not be the first time that just people have been unjustly condemned to death.⁴⁶ In discussing the relationship between Christianity and philosophy, Tertullian attempts to persuade his readers that ultimately all things derive from the scriptures, that the divine wisdom is the source of all other wisdom (47.1), and that the poets and philosophers took all of their insights "from our religion (*nostris sacramentis*)" (47.14).

At the center of this peroratio, Tertullian engages in an extensive argument about the validity of the Christian doctrine of resurrection and restoration, a doctrine that seems to be the source of much mocking and consternation. In chapter 48, Tertullian turns to the question of resurrection, and how Christians are laughed at for believing in resurrection even though philosophers hold what he portrays as much more preposterous assertions.⁴⁷ Tertullian's defense of this doctrine centers on the power of God, and the abilities of the Creator,

46 The mention of Socrates in apologetic literature also seems to be somewhat of a topos. Cf. Justin Martyr, *1 Apol.* 5, *2 Apol.* 10. See also the discussion of the condemnation of Socrates in the *Martyrdom of Apollonius* (*Ac. Apol.* 41), a speech which bears a striking similarity to Tertullian's *Apologeticum*. On the depiction of Socrates in the martyr acts, see G. Roskam, "The Figure of Socrates in the Early Christian *Acta Martyrum*," in *Martyrdom and Persecution in Late Antique Christianity*, 241–56.

47 Notice especially his treatment of Pythagoras at 48.1.

who brought man from nothing, to return man to being again (48.4; 48.7–9).⁴⁸ During his defense of this doctrine, Tertullian argues that it is much more reasonable to believe in the restoration of the soul to the body than to believe in metempsychosis (48.2–3). Tertullian then explains why it must be the case that the soul returns to the body:

Assuredly, as the reason why restoration takes place at all is the appointed judgment, every man must needs come forth the very same who had once existed, that he may receive at God's hand a judgment, whether of good desert or the opposite. Accordingly their bodies, too, will be refashioned, because the soul by itself alone cannot suffer anything without some solid matter, that is the flesh; and because, whatever souls deserve in the judgment of God to suffer, they did not earn it without the flesh, clothed with which they committed all their acts. (*Apol.* 48.4)

Tertullian's belief in the final judgment at the hands of God grounds his belief in the restoration of soul and body at the resurrection. Since the purpose of resurrection is judgment, it follows that body and soul must be restored together in order to face the music, as the soul committed all deeds in the body (and also because the soul needs a body to suffer punishment). If the soul had moved to another body, then it would not be fair for that body to suffer punishment at all. Fair punishment following judgment requires that the soul be restored to the body in which it committed its crimes.

Though here in the *Apologeticum* this is just part of a larger argument, Tertullian elaborates on these central ideas in his treatise *On the Resurrection of the Flesh*, possibly written around 206 CE.⁴⁹ These particular assertions about the necessity of body and soul coming together to receive just deserts are explicated in chapter 14 of the treatise, and are intimately connected with Tertullian's assertions about the justice of God. In chapter 14, Tertullian explains what the cause of resurrection is in the first place, and suggests that it is connected to man's knowledge of God:

48 This connection of God's restorative and creative abilities is central to the discussion of resurrection in both Judaism and Christianity. For discussion, see Claudia Setzer, *Resurrection of the Body in Early Judaism and Early Christianity* (Boston: Brill, 2004); on Tertullian specifically see R. Kearsley, *Tertullian's Theology of Divine Power* (Rutherford Studies in Historical Theology; Carlisle, Cumbria: Paternoster, 1998).

49 Following Barnes, *Tertullian*, 55.

For if man had never sinned, he would simply and solely have known God in His superlative goodness, from the attribute of His nature. But now he experiences Him to be a just God also, from the necessity of a cause; still, however, retaining under this very circumstance His excellent goodness, at the same time that He is also just. For, by both succouring the good and punishing the evil, He displays His justice, and at the same time makes both processes contribute proofs of His goodness, while on the one hand He deals vengeance, and on the other dispenses reward. But with Marcion you will have the opportunity of more fully learning whether this be the whole character of God. Meanwhile, so perfect is our (God), that He is rightly Judge, because He is the Lord; rightly the Lord, because the Creator; rightly the Creator, because He is God. Whence it happens that that heretic, whose name I know not, holds that He properly is not a Judge, since He is not Lord; properly not Lord, since He is not the Creator. And so I am at a loss to know how He is God, who is neither the Creator, which God is; nor the Lord, which the Creator is. (*De Res. Mort.* 14)

Here Tertullian connects the doctrine of resurrection with the experience of the justice of God. It is at the resurrection that the justice of God is illustrated. At that time, God will reward those who have acted righteously and exact revenge upon those who have sinned grievously. We can see here ideas that Tertullian began to formulate in the *Apologeticum* and that he developed more fully over the course of his career, particularly in his arguments with Marcion of Sinope. As I argued in *Trying Man, Trying God*, “Marcion of Sinope is an example of an early Christian reader who did exactly what these courtroom scenes and depictions of God’s judicial activity ask a reader to do—he passed judgment on the events transpiring before him, thought critically and judiciously about the question of divine justice, and ultimately pronounced his own verdict: the God of these passages was guilty of injustice, in a way that was entirely inappropriate to his concept of God.”⁵⁰ Over the course of several treatises, but especially in his five-volume *Adversus Marcionem*, his longest extant treatise, Tertullian “painstakingly refuted Marcion presicely by defending God’s judicial attributes, arguing that it is entirely appropriate and necessary for God to act as a judge, and that God’s judicial activity in both Testaments reveals his ultimate divine justice.”⁵¹ Tertullian thus uses these scenes of the divine courtroom in order to vindicate God from these charges leveled at Him. Here in *On the Resurrection* Tertullian refers to this overall project in a passing

50 Kensky, *Trying Man, Trying God*, 284.

51 Ibid.

jab at Marcion.⁵² But his primary concern is to demonstrate the full reason for resurrection.

Tertullian continues this demonstration by insisting that, ultimately, the entire criterion by which God will execute judgment is “whether he has taken care or not to acknowledge and honour his Lord and Creator” (*De Res. Mort.* 14), and therefore requires both body and soul to be present:

Our position is that the judgment of God must be believed first of all to be plenary, and then absolute, so as to be final, and therefore irrevocable; to be also righteous, not bearing less heavily on any particular part; to be moreover worthy of God, being complete and definite, in keeping with His great patience. Thus it follows that the fullness and perfection of the judgment consists simply in representing the interests of the entire human being. Now, since the entire man consists of the union of the two natures, he must therefore appear in both, as it is right that he should be judged in his entirety; nor, of course, did he pass through life except in his entire state. As therefore he lived, so also must he be judged, because he has to be judged concerning the way in which he lived. For life is the cause of judgment, and it must undergo investigation in as many natures as it possessed when it discharged its vital functions. (*De Res. Mort.* 14)

Though this treatise was written nearly ten years after the *Apologeticum*, Tertullian remains remarkably consistent in his treatment of this topic. The two treatises are obviously written for different rhetorical purposes. In the *Apologeticum* Tertullian is concerned to demonstrate the reasonableness of the Christian doctrine in comparison with those of the philosophers as part of a larger project, while *On the Resurrection* does not have an explicitly apologetic program but rather represents a work of internal theological discourse. Yet the kernel of this doctrine, that resurrection is intimately connected with God’s judgment and therefore requires a union of body and soul, is present in both cases.

In addition, though this is not the main concern of the *Apologeticum*, both texts connect the resurrection with the revelation of the full justice of God and assert that body and soul must be united to effect a *fair* and *equitable* judgment. In the *Apologeticum*, the implication is clear: the judgment of the ultimate spectator, God, will be a demonstration of true equity and true

52 At this point, Tertullian seems to be in the process of rewriting the treatise for the third time, composed in 207–8 CE. For fuller discussion of the composition and revision of this text, see Kensky, *Trying Man, Trying God*, 285–87.

desert, while “your” judgment, the judgment of the Roman rulers, is clearly false and built on irrational fear, hatred, lies, and possibly demonic instigation. The implicit *synkrisis* in this use of the imagery of the divine courtroom indicts the Roman rulers for their unreasonable behavior, while simultaneously defending the Christian doctrine of God.

6 Conclusion

This analysis has demonstrated the flexibility and utility of the imagery of the divine courtroom in apologetic rhetoric. By invoking the existence and workings of the divine courtroom at several key points in the *Apologeticum*, Tertullian is able to continually dislocate the readers and invite them to get true perspective on the proceedings unfolding in front of them. Tertullian thus utilizes the imagery of the divine courtroom as part of an overall hortatory strategy designed at times to comfort and at times to unsettle his readers. This strategy also takes advantage of the genre of apologetic literature in order to imagine different types of readers interacting with the text. In the opening of the *Apologeticum*, for example, Tertullian takes advantage of the imagined courtroom scene to address both Roman rulers and to speak beyond them to a wider Christian readership in need of parenesis and catechesis. By switching back and forth from third to second person, and invoking a rotated courtroom throughout, Tertullian invites his readership to understand what is truly going on when Roman rulers pass judgment on Christian defendants. Understanding the way the trial scenario is rotated in apologetic literature, and adding to that the imagery of an even larger trial unfolding simultaneously, Tertullian plays with the perspective of the reader throughout this section, and thus sets the stage for what is to come in the rest of the *Apologeticum*, where he will continue to shift his readers’ gaze beyond the earthly to the divine courtroom.

Throughout the *Apologeticum*, Tertullian uses the imagery of the divine courtroom to remind readers of God’s all-encompassing vision, and to consider what the proper human response should be to such knowledge. For Tertullian, God’s ultimate vision is part and parcel of God’s judicial authority. Readers are asked to remember that the gaze of even the Roman rulers, on their lofty tribunals, pales before that of God. Roman rulers too are asked to imagine the higher judge to whom they must plead their case and to think about the fact that they are being watched. And for the wider Christian readership, this is meant as consolation and comfort, to bolster their courage under duress, and to keep their eyes properly focused. The intense eschatological spectacle described at *Apologeticum* 45 ends the main section of the *refutatio*

by picking up the main theme of *Apol. 17*: don't look to the Capitol, look to the heavens. Tertullian intends his readers to see the big picture, and be appropriately afraid; to reorient their thoughts so that they can see beyond the limited scope of the provincial governor to the true Judge and trial and thus the proper object of fear.

As I demonstrated in my book, one consistent feature of the literary use of the divine courtroom motif is that of rotating the courtroom so that the reader is in the judicial position, "judging" the actors in the trial, including the judge and the process by which the verdict is reached. By its very nature, apologetic literature includes an implied courtroom scenario where the readers stand in the judicial procedure; by invoking the divine courtroom inside this already rotated courtroom, we have courtrooms within courtrooms. The effect of this is dizzying: readers, who were already asked to make a deliberation in the case Tertullian was presenting before them, are now asked to see themselves as the ultimate defendants in a larger case, and moreover, to make a judgment upon that as well—to judge how their own actions will be perceived. Close reading of the *Apologeticum* demonstrates that Tertullian additionally is asking his readership to recognize that in some way the Christians have already been found innocent, and the Romans have simultaneously been condemned. Therefore, what the readers are asked to do is not only to pass a judicial verdict, but also to 'read' the verdict already proffered and thus align themselves with it—in other words, to become co-jury with God. This use of the divine courtroom strategy asks the readers to align themselves with God and join God's judicial team. These effects are achieved by Tertullian's layering of imagery upon imagery and his manipulation of the implied courtroom scenario already present in the apologetic genre.

In this text from early in Tertullian's career, we can see the divine courtroom becoming a foundational feature of his thought, and his ability to manipulate this imagery to achieve multiple hortatory ends. Throughout his career, Tertullian continues to utilize this motif as part of his literary and persuasive strategies, whether it be in his passionate defense against Marcion, his individual treatises on specific issues of doctrine, or his deliberative writings urging North African Christians toward or against particular courses of action. In many of these texts, Tertullian uses the imagery of the divine courtroom to ask his readers to get perspective on what is transpiring before them, to widen their gaze, and to encourage them to apply proper vision on themselves, their accusers, and the ultimate spectator and judge. Look not to the Capitol but to the heavens, Tertullian reminds them, and by doing so see the full picture, and align yourself properly.

Disqualified Olympians: The Skeptical Greek View of Divine Judges

Victor Bers and Adriaan Lanni***

1 Introduction

Archaic and Classical Greek literature and legal practice exhibit a reluctance, bordering on refusal, to deem the Olympian gods as fit judges, either of themselves or of humans. The gods are routinely portrayed as preoccupied with advancing their own interests, and notably petulant over perceived slights. In Aeschylus' mythical account of the creation of Athens' first court, Athena, a goddess above all of sagacity, declares herself incapable of judging the defendant, a mere mortal, without human jurors to help her. Respectable divine agents of justice are almost always figured as abstractions ("Themis" or the spirits in Hesiod), named, not portrayed with any specificity, devoid of personality.

Perhaps reflecting doubts about the quality of divine judging, Athenian courts were conceived as predominantly mortal affairs. Despite the ubiquity of religious symbols and rituals in Athenian life, Athenian jurors did not, for the most part, seek the assistance of the divine or draw legitimacy from the involvement of the gods in their decisions. This pessimistic view of the gods as judges must reflect in part the Greeks' profound realization of the inherent difficulty of judgment. But the apparent superiority of mortals over the gods in judging may be in large measure a byproduct of an anthropomorphism that imagined the gods not merely as flawed humans, but as lacking the seriousness mortals acquired precisely as a consequence of their impending death.

2 Literature

First, essential prolegomena on some pervasive features of Greek religion, and then pertinent texts—literary, forensic, and philosophical—in the archaic and classical periods, roughly 750 BCE until about 330 BCE; that is, from the

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time of the consolidation of traditional materials constitutive of the *Iliad* and *Odyssey*, more or less as we have them, and the composition of Hesiod's *Theogony* and *Works and Days*, down to fifth-century Athenian tragedy, and, bridging the fifth and fourth centuries, the law court speeches attributed to the canonical ten Attic orators, concluding in the fourth century with Plato and Aristotle.

Despite a multiplicity of religious practices, many regulated by enduring institutions, such as priesthoods, we cannot speak of interpretive authorities, prepared and expected to explain the world in general terms. A deep chasm divides nearly everything we find in the domain of "imaginative literature," historiography, and philosophy from cult. One instance: in the *Iliad* Helen is a woman deeply shamed, even grieved by her adultery, in Euripides' *Orestes* a vain and shameless hussy, in his *Helen* a victim of supernatural sleight of hand; Menelaus is often but a cuckold, dazed by what has happened to him (Aeschylus, *Agamemnon*) or prepared to threaten the life of an innocent (Euripides, *Orestes*). Nonetheless, these troubled spouses, or at least entities bearing their names, were honored at the Menelaion, a shrine just south of Sparta.¹ Writing in the fifth century BCE, Herodotus remarks that Hesiod and Homer (in that order) constructed a theogony for the Greeks and presented their names, honors, skills, and forms (*Hist.* 2.53.6). But so far from crediting the gods with a judicial role, Herodotus quotes, evidently with approval, Solon's depressing generalization: "The divine is grudging and prone to giving trouble" (*Hist.* 1.32).

To be sure, there were cult centers of immense importance—the oracle at Delphi in particular, which played a crucial role in widespread Greek colonization as early as the eighth century BCE and continued to wield considerable power well into and beyond the fourth century BCE. But it is impossible to extract a coherent sense from Delphi of justice in any abstract sense, to say nothing of what might constitute a "divine court." Heraclitus, the philosopher with the sobriquet "obscure," was for once clear enough when he wrote that "the god whose oracle is in Delphi neither speaks nor conceals, but gives a sign" (Heraclitus fr. 93). Outside the realm of literature, the focus of Greek religion appears to be words, that is, the language of prayer, and actions, particularly sacrifice; in compact Greek, λεγόμενα καὶ δρώμενα. It is telling that for Xenophon's Socrates a decisive refutation of the prosecution's charge that he did not honor the gods the city honors, but introduced new divinities, consisted of his public participation in the state's sacrificial rites (*Apol.* 10–11).

The eighteenth book of the *Iliad* concludes with an elaborate description of the shield that Hephaestus, the divine smith, builds for Achilles to replace

1 Reported by Herodotus in *Hist.* 6.61, et al., and confirmed by archaeology.

the one now in possession of Hector. Engraved on the shield is a tableau (*Il.* 18.497–508), practically a holograph with movement and sound, of a judicial process, a dispute between two men arguing whether a blood price had or had not been paid. Remarkably, Homer concludes this section by singing of a large sum of gold to be awarded to the judge who “spoke the fairest opinion” (*Il.* 18.508). The god who crafts the shield has given no role to his fellow Olympians or any other divinity in the adjudication. The narrative of the *Iliad*, taken on its own, might suggest that the gods would make infallible judges of matters of fact, such as whether a blood price had been paid, but not as capable, or even much interested, in determining justice in any complicated dispute. The dominant picture is of omniscient, immensely powerful beings, who regard justice, *dikê*, as that which one expects to get because one can get it. Consummate thugs with a good knowledge of precedent, as it were, and aware that some thugs are more powerful than others.

It is worth noting some exceptions to the general picture described here. At a very few moments, the *Iliad* and, perhaps more emphatically, the *Odyssey*, show the gods as caring for justice in a sense that transcends getting what they individually or collectively want and expect for themselves. In a simile at *Iliad* 16, a warrior's rage is compared to a hurricane “when Zeus sends down the most violent waters in deep rage against mortals after they stir him to anger because in violent assembly they pass decrees that are crooked, and drive righteousness from among them and care nothing for what the gods think” (*Il.* 16.384–88). Addressing the assembly of gods near the start of *Odyssey* 1, Zeus complains that mortals put the blame on the gods for their own disobedience. Case in point: Aegisthus has cuckolded and murdered Agamemnon in defiance of the gods' unambiguous prohibition (*Od.* 1.32–43). Significantly, even in these two high-minded passages divine disapproval is triggered in part by mortals' defiance of divine will.

In the *Theogony*, the narrative of Hesiod's hexameter poem relates the genealogy of the gods, starting with an evidently pre-existing Abyss, and then Earth, and the mating of Earth with the Sky, and on to the current reign of Zeus.² The Olympian gods are not depicted sitting in judgment, but the Muses, daughters of Zeus and Memory, a personified abstraction, maintain surveillance over aristocratic men as they are born, to good effect: “Whomever of the god-nourished kings the daughters of Great Zeus honor and mark out at his birth, on his tongue they pour sweet dew, and from his lips words flow like honey. And the people look upon him as he administers the rules with straight judgments”

2 Cf. Heraclitus fr. 30 D–K: “Neither a god nor a man created this world; it always existed, exists, and will exist . . .”

(*Theog.* 81–86).³ This might count as at least indirect praise for just action, and elsewhere within the poem Hesiod's narrative has something similar: Zeus mates with Themis, an abstraction not normally given attributes sufficiently corporeal to make it possible for her to assume the biological role she serves here. Their offspring include two pertinent abstractions, Eunomia, "Good Order," and Dikê, "Justice," and sometimes the process itself, "litigation."⁴ These are names for the goal and the process, but only rarely do these names acquire human form and agency; they are almost never imagined as gods themselves sitting in judgment.

In Hesiod's later poem, the *Works and Days*, the world's earliest mortals, alive during the Golden Age, the time when Kronos, Zeus' father ruled, "lived like the gods," immune from bodily deterioration until the moment when they died (*Op.* 109–26). As transmitted,⁵ Hesiod's text continues with the comforting report that when this generation as a whole came to the end of its days, the mortals were transformed into supernatural beings dwelling on the earth, "shrouded in mist, tending to justice, repaying criminal acts" (145–46). Again, there is nothing with the sort of specificity needed to make these spirits into recognizably human agents. The very next generation, the Silver Age, enjoyed—or perhaps we should say was crippled by—a prolonged infancy, one hundred years spent playing next to their mothers. Immediately on achieving their long-delayed maturity, they turned against each other and failed utterly in ritual service to the gods. Men of the Bronze Age, more killing machine than human, were without exception anonymous and given over to mutual slaughter; unsurprisingly, there is no indication that they were capable even of facing the individual judgments we encounter in Platonic myth, to which we will soon turn. Next in line: the race of heroes, also dubbed μάκαρες θνητοί, "blessed mortals." Hesiod speaks of them *en masse*, as continuing their lives at ease in the Isles of the Blest, a gift from Zeus, but is silent as to their ethical qualities; this omission disappoints, for these are the very men described in heroic epic and later poetic forms: lyric poetry and, most important, tragedy.

But the *Works and Days* has much to say about injustice and dispute settlement in Hesiod's own time, the Iron Age. Even before he moves to describe this period's characteristics, he makes it clear that this is human society at its worst: "I wish/I had nothing to do with this fifth generation,/Wish I had died before

3 Hesiod, *Works and Days and Theogony* (tr. S. Lombardo; Indianapolis: Hackett Publishing, 1993). All subsequent translations of Hesiod are drawn from this source.

4 M. Gagarin, "Dikê in the *Works and Days*," *CP* 68 (1973): 89.

5 Some Hellenists think these lines are interpolated. See M. L. West, *Hesiod: Theogony: A Commentary* (Oxford: Oxford University Press, 1966), ad loc.

or been born after . . ." (*Op.* 174–75).⁶ In direct address to his brother, whom Hesiod accuses of stealing a fair share of their father's wealth, Hesiod describes Justice as a woman "dragged through the streets by corrupt judges/Who swallow bribes and pervert their verdicts," but later "finds her way back into town, weeping,/Wrapped in mist, and she gives grief to the men/Who drove her out and didn't do right by her" (219–24). A little later Hesiod warns the judges that "Thirty thousand spirits there are on this earth/In the service of Zeus, watching the human race, Overseeing trials for criminal acts, Invisible,/They roam all through the land, cloaked in mist" (252–55). Hesiod goes on to tell of Justice reporting mortals' injustice to her father; then—and apparently *only* then—Zeus sees to it that "the people pay for their foolhardy rulers'/Unjust verdicts and biased decisions" (260–63). Moreover, Zeus' justice often metes out punishment to the entire city to punish a single man (240). Hesiod's summary, which at least on the surface is pronounced *in propria persona*, credits Zeus with omniscience, but ends on a decidedly minor note: "The eye of Zeus sees all and knows all, /And if he wants, he's looking here right now,/And the kind of justice this city harbors/Doesn't fool him one bit. As for me, I'd as soon/Not be a just man, not myself or my son./It's no good at all for a man to be just/When the unjust man gets more than what's just./ But I don't look for Zeus in his wisdom/To bring things to that pass for a long time yet" (267–73). As far as justice relies on the god, or gods, it is delayed and may fall on human beings *en bloc*. All this is paralleled in other times, other genres of writing, and other cultures; still, Hesiod's pessimism must count as unsurpassed. He has already predicted that the forces that inhibit human evil, both figured as beautiful women, Aidôs (Shame) and Nemesis (roughly, Righteous Indignation), will make their way to Olympus, abandoning mankind and leaving it with no internal defense against evil (197–201).

In or about 594 BCE, the Athenians turned to Solon, poet and politician, to serve as *archon* with extraordinary powers to resolve the severe debt crisis and near civil war that beset the city. Among his acts was a radical revision of the Areopagus, the city's ruling council; membership, previously restricted to aristocrats, was henceforth open to men who met a wealth qualification.⁷ It is reported that this body acquired additional powers during the Persian

6 "Been born after" has been variously explained. Some think it is a "polar expression," meant to emphasize Hesiod's unbounded hatred for his own time; others believe, more plausibly, that it alludes to an infinitely repeated cycle. See M. L. West, *Hesiod: Works and Days: A Commentary* (Oxford: Oxford University Press, 1978), ad loc.

7 In a poem (fr. 36W), Solon speaks of divine judgment before "a court of Time," where "Black Earth, great mother of the Olympians" will testify in his behalf. This is an entirely

Wars at the opening of the fifth century, but was reduced to jurisdiction in homicide cases and certain matters of religion. Ephialtes, the politician said to be responsible for this trimming, was assassinated in 462 BCE; four years later Aeschylus presented a trilogy, the *Oresteia*, whose third play, the *Eumenides*, culminates in the foundation of the Areopagus, retrojected to the heroic period.

Aeschylus has filled his *Oresteia* with numerous surprises, but most astounding is his revision of the standard account of the foundation of the Areopagus. The traditional story, known from several sources, tells of its inaugural session as the body trying Ares for the murder of Poseidon's mortal son, with the twelve Olympian gods sitting in judgment.⁸ Our sources do not quite make clear whether the prosecutor, Poseidon, and the defendant, Ares, were themselves empanelled, despite their involvement in the case, but they do report a hung jury, and hence an acquittal. The play is very well known, but a quick review is still in order. In Aeschylus' play, nearly everything but the location of the trial on Ares' Hill (Areopagus) is different from the earlier account. Orestes, a mortal, is on trial for matricide; the Furies, traditional avengers of kindred blood, are the prosecutors; Apollo aids Orestes in his defense. Athena herself not only establishes the court, but serves as presiding officer. The votes are equally divided, and Athena declares the result an acquittal.⁹ In that respect, the traditional and revisionist account are in agreement, but here the jury is composed not of the Twelve Olympians, but of mortal Athenian citizens, the ablest citizens. Remarkably, Athena declares herself inadequate to the task:

This case is too hard for one man to judge.
 No, even I don't have the right to rule
 On a murder trial like this one, one
 That calls down such fierce anger either way,
 Specially as you've come here to my house
 A proper suppliant who's clean, who bears
 No danger to us, and I welcome you.
 And yet these, too [i.e., the Furies], have their appointed task
 That can't be shrugged off lightly. If they fail

metaphorical way of referring to the removal of stones that marked a plot of agricultural land as somehow encumbered.

8 The older account reemerges in various forms, e.g., in Euripides' late fifth-century *Orestes* at lines 1648–53.

9 We leave to the side the dispute over whether Athena's own vote was already included in the tally, or she delays her vote to break the tie.

To get their way, the poison of their outrage,
 Dripping on the land, will soon become
 A deadly everlasting sickness. But since
 The problem's up to me to solve, I'll choose
 A panel of judges—the **best of my citizens**—to preside at murder
 Trials like this, and put them under oath,
 And so set up a court to last forever.
 (*Eum.* 470–84)¹⁰

Athena, traditionally the wisest and most morally-inclined of the Olympians, gives a curiously inadequate explanation for her need to co-opt mere mortals. Implicit *might* be the conflict of divine beings that has precipitated Orestes' flight to Athens to be judged: the Furies who are pursuing him will not be easily assuaged, but Apollo has both commanded him to kill his mother and declared him ritually clean. Her first words, a "case . . . too hard for one man" and not right for her to judge ("not *themis*") may hint at the notion of a jury of the defendant's peers. But Aeschylus has Athena acknowledge the power of the Furies to harm the city—her city, of course. We might suppose that she is perfectly aware of the Furies' penchant for castrating young men (187). And yet, her reference to Orestes' ritual purity (474) acknowledges Orestes' claims in this regard. Most famously, she has also emphatically placed herself within her Olympian milieu by alluding to the unusual mode of her own conception, the swallowing of the abstraction divinity *Mêtis* ("cunning intelligence") and subsequent birth from Zeus' forehead (736–37), a history that explains her preference for the male. Less famously, Aeschylus has not had Athena raise any objection to Apollo's remarkable assertion that marriage trumps oath (213–18). In short, Athena enters the court of her own creation with heavy, entangling baggage. If acquainted with our method of jury selection, prosecution and defense would agree that *voir dire* exposes Athena as, if anything, *less* qualified than the anonymous Athenians. The matter "too hard," then, is not to be glossed "beyond my analytic powers," but "too deeply enmeshed with my particular biography and society." It is often said that by the jury's split vote Aeschylus has dramatized the difficulty of deciding such a case as Orestes' act of matricide. That must be true, but for all her power and intelligence, even Athena does not enter court as a *tabula rasa*.

Here one might suppose that these instances of divine inadequacy arise from the exigencies of narrative. An omniscient god, or even top-notch human

10 Adapted, with emphasis added, from Aeschylus, *The Oresteia* (trans. A. Shapiro and P. Burian; New York: Oxford University Press, 2003).

prophet, would be the death of any narrative art form by virtue of his ability to condense time into a single moment, every sign into perfect identity with its referent. This is a good point to move to the imaginative representation of divine justice in some dialogues of Plato, for whom the gods of poetic narrative were worse than worthless. To simplify a complicated story, we will state that the gods of Homer, Hesiod, and tragedy were for him dangerous fabrications, paradigms of envy and lust, unfit to mount any judicial bench. Even in the *Phaedrus*, a dialogue set in a richly numinous locale, where he allows Socrates to feel nearly overwhelmed by poetry, Plato works at sanitizing the poetic tradition, rejecting the dominant story of Helen's adultery by favoring the variant in which she is wafted to Egypt while a realistic doll goes on to Troy (*Phaedr.* 243a3–b7).

Most pertinent are Plato's eschatological myths.¹¹ Many will be familiar with Socrates' presentation of the "Myth of Er" that Socrates presents at the close of the *Republic*. Here he speaks of judges (*dikastai*) seated between double openings in the earth and in heaven, sending the souls of the dead along the path appropriate to the lives they had lived (*Resp.* 614c).¹² Despite an abundance of narrative detail, some quite gruesome, Plato does not have Socrates explain who or what these judges are, or even explain the source for the list of crimes written on tablets affixed to the backs of the condemned. Elsewhere Socrates is more informative. Addressing the jurors in the *Apology*, he looks forward to arriving in Hades and putting his case to authentic jurors (*Apol.* 42a).¹³ Impanelled there, so it is said, are Minos, Rhadamanthus, Aeacus, Triptolemus, and others of mixed mortal-immortal parentage. It is important to note that these are the immortal *souls* of otherwise mortal men, *not* Olympians, nor

11 We strongly endorse J. Annas' manifesto on the importance of this element of Plato's *oeuvre*: "For Plato, his use of philosophically low-grade forms to present important philosophical content produces a problem, a problem which he never explicitly solves, but which is inescapably obvious to an author who has chosen to do philosophy in a literary medium. The mixed genre of the philosophical myth is of its nature problematic (and its interpretation exposed to much uncertainty). But the easy modern assumption that myths can be ignored on the grounds that they 'do not lend themselves to logical analysis' may be congenial to our own view of the relation of myth to reason, but it fails Plato; it solves his problem by trivializing it. For him, as for Aristotle, 'the lover of myth is a lover of wisdom, in a way' (*Metaph.* 9. 82b18–19)." J. Annas, "Plato's Myths of Judgement," *Phronesis* 27 (1982): 120–21.

12 In the myth near the end of the *Phaedo* (113d), Socrates says the souls undergo judgment, but does not even indicate by whom.

13 Approximately, "agents of justice," *δικασταί*. Before then, he had addressed the panel as *ἄνδρες*, "men."

even lesser gods.¹⁴ Plato provides a much fuller account in the myth at the end of the *Gorgias* (*Gorg.* 523a–27a). Plato regularly has Socrates hedge as to the veracity of the myth, especially in matters of detail (one instance: *Phaedr.* 100d.6–7: οὐ γὰρ ἔτι τοῦτο δισχυρίζομαι), but here he makes a stronger claim, even denying that “myth” is the proper word: what he will present is not what his interlocutor Callicles will take it to be, *muthos*, but *logos*, and he will tell it “as true.” Socrates goes on to describe an evolution in the judgment of the dead, or at least the presumptively wicked. Under Cronos, the earlier king, and continuing under his successor, Zeus, men knew when they were going to die, and they came, still alive, fully clothed, before other living men to be judged. To correct what was seen to be a defective process, Zeus introduced several reforms. He instructed Prometheus, man’s great benefactor, the god who taught them prophecy, arithmetic, and other splendid arts, to deprive men of foreknowledge of the time of their death. The trials were rescheduled: henceforth they were to be held post-mortem, the judges were themselves dead, and both judges and defendants were to be naked. Most relevant: to the judgeships under the new arrangement, Zeus appointed not immortal gods, but Minos and Rhadamanthus, assigned to judge souls arriving from Asia, and Aeacus, to evaluate immigrants from Europe. So far from enjoying the benefits of omniscience, these judges do their work without knowing anything about the identity of the soul before him, even if it once inhabited the body of the Great King of Persia (*Gorg.* 524e–25a). Whenever Rhadamanthus and Aeacus could not agree, Minos was to step in as the final authority. Nowhere does Plato explain why Olympian gods, or at least the more high-minded and sober among them, were not entrusted with this service.

Despite the lurid tales of Olympian tendency to concupiscence and petty vengeance, we cannot say that the Olympians are entirely devoid of moral

14 *Apol.* 41a. Minos and Rhadamanthus, both sons of Zeus, were born to a mortal mother, Europa, and hence were mortal themselves. In a well-known Athenian tradition, a Minos (possibly not the same person) was the cruel king of Crete responsible each year for the death of seven of their youths and maidens. Rhadamanthus brought to the task a specific qualification: he is credited with devising the laws for Crete. Aeacus was a son of Zeus and Aegina, a nymph, i.e., a very long-lived, but still mortal woman. Various legends report that Rhadamanthus had an exceptional gift for justice. Remains of a building in the Athenian *agora* might have been a sanctuary of Aeacus used as a lawcourt. A. Boegehold, *The Athenian Agora XXVII: The Lawcourts at Athens* (Athens: American School of Classical Studies, 1995), 103. Triptolemus is said to have invented the wheel, but had mortal parents. Pluton, i.e., Hades, possibly identified as well as the god of wealth, serves as judge of the dead in *Orphic Hymn* 19. In the matter of Orphic or, more important, Pythagorean influences on Platonic myths, we lack the evidence to move past speculation.

sense. Prominent, because very early in the literary tradition, is Zeus' angry complaint about Agistheus in the opening of the *Odyssey* (*Od.* 1.29–43). In the same poem, Odysseus three times asks strangers whether they are just, friendly to strangers, and god-fearing (*Od.* 6.12f; 9.175f; 13.20f). This inquiry at least suggests that the gods have, and might act on, a sense of justice. In his political poems, Solon portrays Zeus as concerned for justice—it must be said a notably slow-moving, rough justice, sometimes inflicted on a sinner's descendants. The sixth-century BCE poet Xenophanes mocks polytheism and rebukes those who attribute human wrongdoing and human form to the gods (fr. 1W, frs. 11–16 D–K, 14–16 D–K), but nothing in the surviving fragments suggests divinity sitting in judgment on mortals.

3 Legal Practice

Does the ambivalence toward divine judging that we meet in Greek literature carry over into ancient Greek legal practice? The absence of a definitive statement of Greek or Athenian legal theory makes any answer speculative, but our surviving evidence suggests that from the archaic period through the heyday of the Athenian democracy, the Greeks viewed lawmaking and judging as predominantly human endeavors. To be sure, religious symbolism was ubiquitous in the legal system: in Athens laws and decrees often began with the word “gods” (*theoi*); copies of laws were stored in an archive named for the “Mother of the Gods” (*Metroon*); and oaths play a prominent role in legal proceedings. Yet despite the close entanglement of secular and sacred, divine intervention was generally not considered part of the act of judging, and the legitimacy of laws and court decisions rested predominantly on human reason rather than divine authority. It is important not to overstate the case: we say “generally” and “predominantly” because there are contrary strands appealing to divine authority and intervention. Our claim is that the overall impression created by the totality of the sources is one that emphasizes the human, rather than the divine, in the act of judging.

Our earliest glimpse of Greek legal practice is the depiction of dispute resolution procedures in early Greek literature. As Michael Gagarin has documented, literary sources, such as Homer and Hesiod, suggest that in the period before written law, parties typically voluntarily submitted their dispute to a third party (a judge, or in some cases, group of judges).¹⁵ Although the details

15 For detailed discussion of the sources, see M. Gagarin, *Early Greek Law* (Berkeley: University of California Press, 1986), 19–50.

varied, three of the key features of the procedure were that both parties agreed to submit to the judge, that in the absence of an enforcement mechanism the judge had to find a compromise solution that was acceptable to both parties, and that public opinion played a key role in persuading the parties to comply with the judgment.¹⁶

What is most relevant for our purposes is that these archaic judges did not attain their position through the grant of divine authority, nor are their decisions perceived to be reflections of divine will. In some sources, the judges were wise men who attained their position by earning a reputation for delivering straight judgments; that is, they owe their position not to the gods but to the public that approves of their previous decisions and the potential disputants who choose them as judge.¹⁷ The scene on the shield of Achilles in the *Iliad*, already mentioned, represents an extreme version of the role of mortal public opinion both in determining the substance of the decision and in lending legitimacy to the judgment: according to one prominent interpretation of this difficult text, a series of judges propose possible solutions, and the crowd chooses which judgment is to stand (*Il.* 18.497–508).¹⁸

In Hesiod's *Theogony*, the Muses are said to favor, at the time of their birth, *some*—evidently not all—of the kings who will serve as judges by providing them with soothing words that enhance their standing in the eyes of their subjects, but there is no suggestion that the Muses, or any other divine figure, are deciding the case through the mouthpiece of the mortal judge.¹⁹ Moreover, the prominent worry that some judges may be incompetent or even corrupt (e.g. Hesiod's "gift-devouring kings," *Op.* 27–39) evidently trumps any signs of divine authority for or intervention in the archaic legal process.

Between roughly 650 and 550 BCE, many Greek city-states appointed a lawgiver to enact a series of written laws that would serve as the foundation of the city's social and political order.²⁰ Solon of Athens is the best-known and

¹⁶ Ibid., 43.

¹⁷ E.g., Deioces (*Hist.* 1.96–98), the first king of the Medes, attains his kingship precisely because of his reputation as a wise judge. As Gagarin points out, although Deioces is not a Greek, his story is emblematic of archaic Greek dispute resolution (Gagarin, *Early Greek Law*, 20). For other examples of the basic procedure, see *ibid.*, 19–50.

¹⁸ For discussion of some of the prominent interpretations of the scene, see Gagarin, *Early Greek Law*, 26–34.

¹⁹ *Theog.* 80–93; for discussion see Gagarin, *Early Greek Law*, 24–25. It should be noted that some fifty lines earlier in the poem (26–28) as we have it, the Muses notify Hesiod that they are capable of telling many convincing lies.

²⁰ For discussion of the early lawgivers, with references to primary and secondary sources, see A. Lanni and A. Vermeule, "Constitutional Design in the Ancient World," *Stanford Law Review* 64 (2012): 907–49.

most well-attested example. The literary accounts of the early Greek lawgivers share some common elements: in response to civil unrest, often between the rich and poor, the city-state chooses an individual lawgiver to propose a series of laws, which the people then ratify. In many cases, it is the lawgiver's wisdom and his neutrality with respect to the civil conflict that leads to his appointment and lends legitimacy to his proposed laws. To cite just one example, it seems that Solon was chosen by the Athenians both because of his reputation for wisdom²¹ and because he was associated with neither the rich nor the poor (*Sol.* 14.1). Just as in the case of archaic dispute resolution, most of the early Greek "constitutions" were perceived to be the product of human reason, not divine intervention. Several scholars have pointed out that stories attributing divine inspiration to the laws are relatively rare, and tend to be found in aristocratic rather than democratic city-states.²² The archaic Greek lawgiver was not a Moses-like conduit of divine knowledge. Rather, it is the individual lawgiver's wisdom, experience, and position as a neutral outsider that permits him to propose a just constitution.

Shifting focus from archaic Greece to the Greek legal system that we know the most about—classical Athens of the late fifth and fourth centuries BCE—corroborates the picture of limited divine intervention in the legal process. It may be helpful to provide a few words of background about the Athenian popular courts, which heard most disputes that reached trial. With few exceptions, litigants were expected to represent themselves in court (though they could, and did, hire speechwriters, we have no text in which a litigant admits doing so). Each Athenian litigant was allotted a fixed amount of time to present his case. There was no judge to instruct the jury as to the laws; litigants were responsible for finding and quoting any laws that they thought helped their case. Juries were chosen by lot from adult male citizens and generally ranged from 201 to 501 in size. A simple majority vote of the jury, taken by secret ballot and without formal deliberation, determined the outcome of the trial. No reasons for the verdict were given, and there was no provision for appeal. Nevertheless, some disputes would reappear in court under various guises.

21 *Ath. Pol.* 5.3 (noting that Solon was one of the leading men in reputation).

22 The two most prominent cases of divine origin are Zaleucus and Lycurgus. While Zaleucus and Lycurgus are well-known lawgivers, they are outnumbered by lesser lawgivers whose laws were not attributed to divine origin. See Gagarin, *Early Greek Law*, 60–61 (noting that the claim of divine or semi-divine origin for the laws is not widespread); A. Szegedy-Mazak, "Legends of the Greek Lawgivers," *Greek, Roman, and Byzantine Studies* 19 (1978): 199–209 (stating that for the Greeks law was a human endeavor, and that divine inspiration was not the most important source of law).

The broad jurisdiction of the Athenian popular courts suggests human competence to judge even divine matters. There were no priestly courts or dispute procedures; adjudication of sacred laws, violations of sacred property (such as temple-robbing) and religious offenses (such as impiety) were tried before ordinary jurors in the popular courts.²³ At first glance, the specialized homicide courts might appear to be an exception.

The homicide courts, the most prominent of which was the Areopagus, were not religious courts; the judges in these courts were not priests, but elders who had served as archon (a civic magistrate), and the law they enforced was attributed to Draco, an archaic lawgiver. But the homicide courts employed a number of distinctive procedures and rules which might be interpreted to be influenced by the fear of pollution, and thereby be thought to be designed to insure divine, as well as mortal, justice. For example, the involuntary killer who returned to Athens after exile was required to undergo ritual purification (*Dem.* 23.72); exiled killers who were accused of a second crime were tried from a boat offshore so that they did not set foot on the soil; and one homicide court, the Prytaneion, heard cases in which an animal or inanimate object caused the death or where the identity of the killer was unknown, proclaiming the unidentified killer an exile or ritually expelling the offending animal or object.²⁴ Nevertheless, several scholars have suggested that although fear of pollution cannot be discounted altogether, the primary rationale behind most of these provisions was likely a practical desire to rein in vendetta rather than religious scruples.²⁵ Moreover, although the Councilors who judged in the homicide courts were reputed to produce fairer verdicts than popular court juries, the homicide courts' superior reputation was based on the homicide judges' wisdom, age, moral character, and ability to focus solely on the legal charge and ignore extraneous character evidence.²⁶ In the many passages extolling the homicide courts, there is no suggestion that the homicide verdicts were in any way guided by divine intervention.

23 In one such case, the trial of Andocides for Profanation of the Mysteries, only initiates in the relevant cult were admitted to the jury (*Andocides* 1, *On the Mysteries* 31).

24 For discussion, see A. Lanni, *Law and Justice in the Courts of Classical Athens* (Cambridge: Cambridge University Press, 2006), 75–78.

25 See, e.g., R. Parker, "Law and Religion," in *The Cambridge Companion to Ancient Greek Law* (ed. M. Gagarin and D. Cohen; Cambridge: Cambridge University Press, 2005), 61–81; E. Carawan, *Rhetoric and the Law of Draco* (Oxford: Clarendon Press, 1998), 17–19. Also see D. MacDowell, *Athenian Homicide Law* (Manchester: University of Manchester Press, 1963), 1–7 (discussing the varied purposes of the Athenian homicide provisions).

26 For discussion of the actual and perceived differences between the homicide and popular courts in composition and argumentation, see Lanni, *Law and Justice*, 75–114.

Aside from the oaths sworn by litigants and jurors,²⁷ there is little evidence of the divine in the procedures of the popular courts, the largest jurisdiction in the Athenian system. While the use of lottery might be conceived as the introduction of randomness to permit divine participation, in Athens the lot was the standard mechanism for choosing magistrates and jurors, and did not carry explicitly religious overtones. The random selection procedure used to assign members of the jury pool to individual courtrooms was unusually elaborate and filled with fanfare.²⁸ Yet this complex procedure need not suggest divine participation in juror selection. It seems more likely that this juror selection ritual was, in the main, intended to prevent bribery of jurors and to instill in the jurors, who were formally unaccountable for their verdicts, a sense of the seriousness of their task.²⁹

What of divine intervention in the verdict itself? Ancient voting systems often include some provision for the gods to affect the outcome. The voting procedure at the principal Athenian dramatic festival, the Dionysia, seems to have included the possibility of divine intervention. Although a representative of each of the ten tribes cast a ballot, only five ballots were counted initially. If one of the three competitors had a majority of the five votes selected, he was declared the winner, even though it was possible that the “winner” actually had not received the highest number of the ten ballots cast.³⁰ This procedure is commonly interpreted in theological terms: Dionysus is “the ultimate theatrical arbiter.”³¹ The election procedure in Roman tribal assemblies similarly used the lot to permit Jupiter to influence the outcome.³² By contrast, there is

27 E.g., Aeschines 2.87 (C. Carey, *Aeschines* [Austin: University of Texas Press, 2000], 123) (litigants’ oath); Demosthenes 24.149–51 (J. Vince, *Demosthenes III* [Cambridge, Mass.: Harvard University Press, 1935], 469–71) (jurors’ oath sworn by Zeus, Poseidon, and Demeter).

28 This procedure is also described in *Ath. Pol.* 59.

29 For discussion, see V. Bers, “Just Rituals: Why the Rigamarole of Fourth-Century Athenian Lawcourts?” in *Polis and Politics: Studies in Ancient Greek History* (ed. P. Flensted-Jensen et al.; Copenhagen: Museum Tusculanum Press, 2000), 558–59. Bers suggests that the procedure could easily be understood by some jurors not as strictly aleatory, but opening a space for the gods to exert their power in determining who would be seated on a panel.

30 For a discussion of the voting procedure, see C. W. Marshall and S. van Willigenburg, “Judging Athenian Dramatic Competitions,” *JHS* 124 (2004): 90–107.

31 Marshall and van Willigenburg, “Judging Athenian Dramatic Competitions,” 91. In the New Testament (Acts 1:21–26), the successor to Judas is selected by lot from a shortlist (Marshall and van Willigenburg, “Judging Athenian Dramatic Competitions,” 91 n. 10).

32 For discussion, see L. R. Taylor, *Roman Voting Assemblies* (Ann Arbor: University of Michigan Press, 1990), 80–83.

no explicit suggestion in our sources that the gods influence Athenian jury verdicts. Interestingly, when prospective litigants created “curse-tablets” against their opponents, they commonly asked that the gods interfere with the opposing litigant’s presentation by, for example, making him tongue-tied in court, but they do not request that the gods insure a favorable verdict.³³

Finally, it is worth noting that notions of informal juror accountability tend to take the form of informal social sanctions by fellow citizens rather than divine punishment. Litigants warn jurors that an unfair verdict will tarnish their worldly reputations, and ask jurors to contemplate how they will defend their verdict when questioned by the spectators as they leave the courtroom, or perhaps by their mothers, wives, and daughters.³⁴

In summary, given the centrality of religious ritual in Greece, it is remarkable how few traces of the divine we find in Greek and Athenian legal process. In legal practice, as in Greek literature, judging seems to have been perceived as almost entirely a human, not a divine endeavor. The jurymen swore by Zeus, Poseidon, and Demeter to do an honest job (*Dem.* 24.151),³⁵ but this expressed the society’s hope for their courts more than an expectation that those gods would guide the jurors to the right verdict.

4 Conclusions

What might explain the apparent skepticism regarding gods as judges? One factor may simply have been the strength of anthropomorphism in the literary and plastic art tradition: if gods are depicted in the image of mortals, they are more likely to be flawed, biased, and self-serving judges.³⁶ Xenophanes

33 C. Faraone, “Curses and Social Control in the Law Courts of Classical Athens,” *Dike* 2 (1999): 99–121. We are in agreement with M. Dreher (contra H. Versnel), in regarding the curse tablets as “imaginary penalties,” not true elements of the judicial process (M. Dreher, “Gerichtsverfahren vor den Göttern?—Judicial Prayers und die Katagoresierung der *Defixionum Tabellae*,” in *Symposion 2009: Vorträge der griechischen und hellenistischen Rechtsgeschichte* [ed. G. Thür; Vienna: OAW, 2010], 331–32).

34 E.g., Demosthenes 59.110–11 (V. Bers, *Demosthenes, Speeches 50–59* [Austin: University of Texas Press, 2003], 188); Dinarchus 2.19 (I. Worthington, C. Cooper, and E. Harris, *Dinarchus, Hyperides, and Lycurgus* [Austin: University of Texas Press, 2001], 50); Aeschines 3.247 (Carey, *Aeschines*, 173–74). For discussion, see A. Lanni, “Publicity and the Courts of Classical Athens,” *Yale Journal of Law and Humanities* 24 (2012): 119–35.

35 Vince, *Demosthenes III*, 471.

36 The cult, of course, did not always require depictions of the divine in human shape. For discussion, see M. Gaifman, *Aniconism in Greek Antiquity* (Oxford Studies in Ancient Culture and Representation; Oxford: Oxford University Press, 2012).

of Colophon, a poet and philosopher born in the sixth century BCE, suggests some contemporary awareness that anthropomorphism might distort the depiction of the gods: he not only rejected the Homeric and Hesiodic tales of divine deceitfulness (fr. 11 D–K), but ridiculed all anthropomorphism: “If oxen and horses and lions had hands/and so could draw and make works of art like men, horses would draw pictures of gods like horses,/and oxen like oxen . . .” (fr. 15 D–K).³⁷

Another possibility is rooted in literary requirements: poetry that sets out to depict gods in interaction with humans, but is devoid of an appeal to our own experience of body and mind, will lurch towards the flat and colorless.³⁸ Even Zeus, the supreme god of the third, and presumably final, stage of theogonic evolution, could not be shown as literally omniscient and omnipotent without taking the air out of epic narrative. Zeus can be distracted from the battle at hand when fooled by Hera and Aphrodite into indulging in a session of spectacular lovemaking (the episode is deliciously narrated in the section known since antiquity as the “Deception of Zeus” [*Il.* 5.153–353]; in Hesiod, Zeus is more or less taken in by Prometheus [*Theog.* 533–61; *Op.* 47–58]). Over time, this depiction of the gods may have become standard even where it was not necessary to the plot of the work. This characterization of the gods may have been too deeply ingrained to allow even Plato, a literary artist who disparaged the poets for presenting the gods as adulterers, father-castrators, and so on, to present one or more of the Olympians as judges of the dead. But these rationales cannot entirely account for our evidence. Herodotus does not doubt the existence and participation of gods, and he has the highly respectable Solon attribute to them a petulance that would shame a respectable mortal (1.32). Thucydides gives no sign of personal belief in the gods’ existence, though at important points in his narrative he reports popular belief in both. And while literary concerns often influenced both poets and prose authors, these concerns cannot fully explain the dearth of references to divine intervention in ancient legal practice.

We propose an alternate explanation: the gods were considered disqualified as judges because of their most fundamental attribute, immortality. The fact of mortality can infuse mortals with purpose and seriousness. We meet a clear statement of what looks something like a twentieth-century existentialist stance at *Iliad* 12.322–28, where Sarpedon, son of Zeus and a mortal woman,

37 A. Miller, *Greek Lyric* (Indianapolis: Hackett Publishing Company, 1996).

38 Consider, for instance, the hexameter *Hymn to Zeus* by the stoic philosopher Cleanthes (fourth and third centuries BCE). Aside from a routine reference to dark clouds and thunderbolts (fr. 1.32), both expressed with single-word epithets, the imagination goes hungry.

sees the fact of mortality as providing a sufficient ground for risking death in battle:

Man, supposing you and I, escaping the battle,
 would be able to live on forever, ageless, immortal,
 so neither would I myself go on fighting in the foremost
 nor would I urge you into the fighting where men win glory.
 But now, seeing that the spirits of death stand close about us
 in their thousands, no man can turn aside nor escape them,
 let us go on and win glory for ourselves, or yield it to others.”³⁹

The knowledge that life is finite spurs mortals to make the most of their time by seeking glory and honor in all their endeavors. Achilles, after all, knowingly chooses a short life of glory over a long life of obscurity (*Il.* 9.412–13). The gods, by virtue of their immense power and immortal life, lack the seriousness and urgency mortals bring to the task of judging, and yet can be vain and petulant. Even Athena, a goddess associated with war and sagacity and utterly immune from erotic distractions, could be portrayed as vindictive if a mortal treated her with the slightest discourtesy, as in Sophocles’ *Ajax*. Moreover, in comparison to the infinite experience implied by eternal life, the disputes of mortal men cannot but seem trivial to the gods. The Greeks would likely have sensed that the Olympians lacked, and would continue to lack, an appreciation of the gravity of the events in any mortal’s brief life.⁴⁰ In sum, we might say that interrogation at *voir dire* revealed the gods as disqualified simply by their life without end.⁴¹

39 R. Lattimore, *The Iliad of Homer* (Chicago: University of Chicago Press, 1951).

40 Implicit in Aristotle’s *Nicomachean Ethics* is a related, though somewhat different, reason for preferring mortals as judges. Aristotle declares that humans, in comparison to animals, have a special capacity for rationality. His god is not inferior to humans—quite the opposite—but is seen as remote from practical, contingent matters, and therefore has no need for the practical wisdom that humans have developed to address them and that are vital to judgment of mortal affairs.

41 The authors would like to thank the conference organizers, particularly Ari Mermelstein, and Verity Harte and James Warren for some last-minute philosophical help.

A Life of Jesus as Testimony: The Divine Courtroom and the Gospel of John

Andrew T. Lincoln*

Legal disputes, trials and vindication before the divine judge all play their part in early Christian lives of Jesus. Each of the Synoptic Gospels relates how during his mission Jesus of Nazareth was engaged from time to time in controversy with groups such as the Pharisees and Sadducees about the interpretation of Torah and how at its end he was arrested, tried by a Jewish council and then by the Roman procurator, Pilate, before being crucified by the Romans. Each also claims that, despite this ignominious conclusion of his mission, he would be vindicated as the Son of Man in the divine courtroom. But one Gospel, the Gospel of John, stands out from the others, as it adapts this traditional outline, elaborates on its forensic language and themes and makes the notion of a divine courtroom with its metaphor of a lawsuit or trial on a cosmic scale one of the major ways in which it interprets the life of Jesus and its significance.¹

1 Divine Courtroom Imagery in the Gospel of John

Initial appreciation of the distinctiveness of the Gospel of John (GJ) in its appeal to divine courtroom imagery can be gained through observing what it does with the Synoptic outline sketched above. It has the most extensive Roman trial scene, which it makes the centrepiece of its passion narrative and in which the issue of who is the real judge in this trial is highlighted (cf. 19:13).²

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- 1 Participation in the symposium provided the opportunity to revisit and reflect again on some of the issues explored over a decade ago in my *Truth on Trial: The Lawsuit Motif in the Gospel of John* (Grand Rapids, Mich.: Baker Academic, 2000). Given the constraints of this paper, readers will need to indulge its author when they are referred on occasion to the much fuller treatment of some of its observations in that earlier monograph.
- 2 Interpreters of 19:13 differ only about whether its wording indicates that the irony of who is judging whom is implicit, with Pilate taking the judgment seat, or is explicit, with Pilate seating Jesus on the judgment seat. See, e.g., W. A. Meeks, *The Prophet-King: Moses Traditions and the Johannine Christology* (NovTSup 14; Leiden: Brill, 1967), 73–76; Lincoln, *Truth on Trial*, 133–35; M. Z. Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and*

A final trial before a Jewish council in Jerusalem is omitted and replaced by a short interrogation by Annas, and instead the major part of Jesus' public teaching mission is formulated as an extended trial before Israel and its religious authorities (cf. 5:1–12:50). In place of the brief controversies in the Synoptics about such matters as sabbath observance and purity laws, which culminate in a memorable pronouncement by Jesus, there are long disputations or mini-trials with the opposition the GJ frequently and notoriously designates as 'the Jews' as its equivalent to the Synoptics' 'this generation' or 'this evil generation' (cf., e.g., Mark 8:12; Matt 12:39, 45; Luke 11:29).³ In GJ's controversies the issues of the Synoptic Sanhedrin trial, particularly Jesus' messianic claim, his talk of himself as Son of God, and his alleged blasphemy, are already thrashed out and attempts made to arrest and kill him (cf. esp. 10:22–39).

The frequency of forensic language in GJ is another indicator of its distinctiveness. The noun 'witness' or 'testimony' (μαρτυρία) occurs fourteen times in comparison with four times in the three Synoptics together and the verb 'to witness' or 'to testify' (μαρτυρεῖν) thirty three times in comparison to twice in the three Synoptics. The verb 'to judge' (κρίνειν) is employed nineteen times in GJ as opposed to six times in Matthew and six times in Luke. Although the noun 'judgment' (κρίσις) occurs eleven times in John as compared with four in Luke, its use is not quite as striking, since it is also a characteristic term in Matthew where it appears twelve times.⁴ Legal proceedings aim to establish the truth and this forensic sense is one of the major connotations of the term ἀληθεία, which occurs twenty five times in this Gospel as opposed to seven times in the three Synoptics together. The adjective ἀληθής, 'true,' is found fourteen times in John as compared with once in Mark and once in Matthew and its cognate ἀληθινός features nine times in comparison with once in Luke.⁵

Christian Literature (WUNT 2/289; Tübingen: Mohr Siebeck, 2010), 239–40; G. L. Parsenios, *Rhetoric and Drama in the Johannine Lawsuit Motif* (WUNT 2/258; Tübingen: Mohr Siebeck, 2010), 38–39.

- 3 Throughout this paper 'the Jews' refers to this corporate character within the narrative. Some of GJ's references to 'the Jews' have no negative connotations and are simply neutral or descriptive, others indicate that this group has a divided response to Jesus, but just over half have in view those Jews who have an unbelieving or hostile attitude to Jesus and therefore function as the main opposition. For discussion of this phenomenon from a variety of approaches, see, e.g., R. Bieringer, D. Pollefeyt, and F. Vandecasteele-Vanneuville, eds., *Anti-Judaism and the Fourth Gospel: Papers of the Leuven Colloquium, 2000* (Assen: Royal Van Gorcum, 2001), esp. 229–356.
- 4 On the divine courtroom aspects of judgment in Matthew, see Kensky, *Trying Man*, 210–23.
- 5 Parsenios, *Rhetoric and Drama*, 49–85, adds 'to seek' (ζητεῖν) as indicative of GJ's forensic language, making a substantial case that the verb takes its force both from Jewish Wisdom

But these bare statistics cannot tell the full story. Whereas in the Synoptics John the Baptist is primarily characterized as the herald of a coming judgment and the forerunner of the Messiah, in GJ he is portrayed almost exclusively as a witness to Jesus, and this Gospel introduces a major figure, who does not appear in the Synoptics at all, the Beloved Disciple, who, because of his intimate relationship to Jesus, serves as the ideal witness. Reference to the testimony of John twice interrupts the Gospel's prologue (1:6–8, 15) and in its epilogue the narrative as a whole is attributed to the true testimony of the Beloved Disciple (21:24; cf. also 19:35). In this way the notion of testimony provides an *inclusio* that frames the Gospel as a whole and indicates that it is itself to be seen as the written testimony in a legal process. Whereas in the Synoptics Jesus is presented as the agent of God's claim upon the world in terms of inaugurating God's rule or kingdom, in GJ's testimony that claim is now depicted in terms of God's salvific judgment, which, through Jesus as its unique agent, inaugurates 'life' or 'eternal life.' In the Jewish Scriptures God's righteous judgment and God's salvation are often paralleled and frequently the setting for appeals to divine judgment was Israel's experience of injustices and oppression and cries for God to intervene and provide for Israel's well-being. For God to establish justice was for God to right wrongs and to restore the conditions necessary for life to flourish. The divine courtroom functions in GJ as part of its claim that God's end-time judgment for life has begun ahead of time in a decisive way through what took place in Jesus. Its protagonist is characterized as himself both a witness and a judge. Major statements of Jesus' mission are formulated in these terms. In 18:37 he tells Pilate, 'For this I was born, and for this I came into the world, to testify to the truth' (cf. also 3:11, 31–33; 7:7; 8:14, 18), while earlier in 9:39 he says, 'I came into this world for judgment so that those who do not see may see, and those who do see may become blind' (cf. also 5:22, 27–30; 12:47, 48). Not only his words but also his deeds contribute to these roles. The miracles or signs serve as testimony to his significance (5:36)⁶ and, through their bringing of life and well-being in abundance, function as present realizations of salvific judgment.

traditions and from Greek legal rhetoric and that hostile seeking of Jesus is a form of legal investigation.

- 6 For elaboration of the role of the signs as forensic evidence, see esp. W. H. Salier, *The Rhetorical Impact of the Semeia in the Gospel of John* (WUNT 2/186; Tübingen: Mohr Siebeck, 2004), 34–39; 44–45; 75–76; 117–19; 146–47; 169–70; 173–77 and Parsenios, *Rhetoric and Drama*, 87–128.

2 Deutero-Isaiah's Divine Courtroom Scenes as Source

There can be little dispute that this metaphor of a cosmic trial is pervasive in GJ's depiction of Jesus and his significance.⁷ But what led to this author's shaping his biography of Jesus in such a fashion? Apart from the elements already present in the Synoptic tradition that were conducive to this treatment, there appear to be two primary candidates for having fuelled his imagination in elaborating the tradition in terms of the divine courtroom. The first consists of literary and cultural influences in the Hellenistic world of Second Temple Judaism and the second, to be considered later, is the specific set of circumstances in which he is writing. As regards the former, in his recent monograph, *Rhetoric and Drama in the Johannine Lawsuit Motif*, George Parsenios has helpfully explored how this Gospel's forensic themes resonate with the world of Graeco-Roman legal rhetoric and Greek tragedies, where there is indeed a close and mutually influential relationship between the discourse of the lawcourt and the dramas of writers such as Euripides and Sophocles.⁸ It is certainly illuminating to read GJ in the light of this material, yet, as Parsenios

7 For a review of previous scholarly engagement with this theme, see Lincoln, *Truth on Trial*, 4–6 and now for updates the secondary literature in A. J. Köstenberger, *A Theology of John's Gospel and Letters* (Grand Rapids, Mich.: Zondervan, 2009), 436–56, Parsenios, *Rhetoric and Drama*, and Kensky, *Trying Man*, 223–42. Mention should also be made of M. Asiedu-Pepurah, *Johannine Sabbath Conflicts as Juridical Controversy* (WUNT 2/132; Tübingen: Mohr Siebeck, 2001), which contains helpful exegetical analyses of the controversies associated with the sabbath in John 5 and 9. Although it begins its analysis with discussion of 'the OT *rib*' (11–24), this is unfortunately skewed by an insistence on treating this only as a historical phenomenon, which, it is claimed, was a two-party juridical controversy rather than a trial. There is no discussion of Deutero-Isaiah or indeed of any of the prophetic adaptations of the pattern, including its use as part of controversies with the nations, and so a recognition of how the *rib*-pattern functions in new ways in such literary contexts as part of a broader metaphor is completely missing. Correspondingly, the analyses of the two sections of the Gospel fail to interact with the Jewish Scriptural use of the *rib*-pattern and are inadequately related to the overall use of the controversy metaphor in GJ as a whole. R. Bauckham, *Jesus and the Eyewitnesses: The Gospels as Eyewitness Testimony* (Grand Rapids, Mich.: Eerdmans, 2006), 384–411, also recognizes the importance of the cosmic lawsuit, though he employs it to pursue his argument that the testimony of GJ is that of a reliable eyewitness.

8 Parsenios, *Rhetoric and Drama*, passim; see also J. A. Brant, *Dialogue and Drama: Elements of Greek Tragedy in the Gospel of John* (Peabody, Mass.: Hendrickson, 2004), 140–49, linking the *agōn* of tragedies to the controversies in GJ, and Kensky, *Trying Man*, 63–118, a chapter entitled 'The Divine Courtroom After Life: Order and Chaos in Greek and Roman Literature,' which underlines that Greek drama put the question of the justice of divine activity on stage to be judged before the same audience that regularly attended trials and lawsuits.

concedes, apart from the likelihood that its author would have been affected by the ‘theatricalization of ancient culture,’ it is impossible to know how much of this material he would have known or read. ‘We can know almost nothing with certainty about what he read, apart from the Old Testament.’⁹ It is indeed the Jewish Scriptures in Greek translation, particularly Deutero-Isaiah, that provide the major literary catalyst for the evangelist’s use of the lawsuit motif.

We know that the evangelist read this part of Isaiah’s prophecy, because he quotes from it three times (LXX 40:3 in 1:23; LXX 53:1 in 12:38; and LXX 54:13 in 6:45).¹⁰ And it is in this part of Isaiah that the *rib*-pattern, the prophetic or covenant lawsuit, with its frequent references to judgment and witness, is dominant. Although there is scholarly debate about whether the passages in which this pattern is found should be seen as a discrete genre and whether they should be designated as disputations or trial speeches, there is broad agreement that in particular Isa 42:18–25; 43:22–28 have features of a lawsuit between YHWH and YHWH’s people, and that, in an extension of the motif, Isa 41:1–5; 41:21–29; 43:8–13; 44:6–8 and 45:18–25 have the characteristics of trial speeches of YHWH against the nations.¹¹ In other prophetic oracles too there are the questions and assertions associated with disputations (e.g., 40:12–31; 44:24–28; 45:9–13; 46:5–11; 48:1–15; 49:14–26; 50:1–3). When disputation and trial speeches are the form in which YHWH’s sovereign purposes and actions on behalf of Judah and Israel are disclosed, the divine throne room and its heavenly council of Isa 6:1–5, the nerve centre of the universe, is also

9 Parsenios, *Rhetoric and Drama*, 28. Parsenios, *ibid.*, 44–45 makes clear that he sees his own work as supplementing rather than displacing any connection between John and biblical models.

10 On the use of explicit Isaiah citations in GJ, see C. H. Williams, “Isaiah in John’s Gospel,” in *Isaiah in the New Testament* (ed. S. Moyise and M. J. J. Menken; London: Continuum, 2005), 101–16; *idem*, “The Testimony of Isaiah and Johannine Christology,” in *As Those Who Are Taught: The Interpretation of Isaiah from the LXX to the SBL* (ed. C. M. McGinnis and P. K. Tull; SBLSymS 27; Atlanta: Society of Biblical Literature, 2006), 107–24.

11 Cf., e.g., C. Westermann, *Isaiah 40–66* (London: SCM, 1969), 15–18; A. Schoors, *I Am God Your Saviour: A Form-Critical Study of the Main Genres in Is. XL–LV* (VTSup 24; Leiden: Brill, 1973), 239; R. F. Melugin, *The Formation of Isaiah 40–55* (BZAW 141; Berlin: de Gruyter, 1976), 43–63; K. Nielsen, *Yahweh as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib-Pattern)* (JSOTSup 9; Sheffield: JSOT Press, 1978), though there is some disagreement among these and other scholars about the precise delimitation of these textual units. J. Goldingay and D. Payne, *A Critical and Exegetical Commentary on Isaiah 40–55, Volume 1* (London: T. & T. Clark, 2006), e.g., 135–36 are content to call such passages ‘court scenes.’ On the divine courtroom in Deutero-Isaiah, see also Kensky, *Trying Man*, 36–39.

being seen as the location of the divine judge, as the heavenly courtroom. In the context of exile in and return from Babylon the contests with the gods of the nations dominate, Israel's God serves as both judge and prosecutor, and the purpose of the contests is to show that although Babylon appears to control history, the real ruler is Israel's God with the immediate issue being whether or not YHWH is the cause of Cyrus' advent and Babylon's downfall. Interspersed with the trial scenes of the nations are oracles of salvation and assurance for Israel, indicating that even in the contest with the gods of the nations, it is Israel that is being addressed. In Isa 43:8–13, for example, the nations are called to bring into court the witnesses for their gods who will establish and speak the truth (LXX 43:9—εἰπάτωσαν ἀληθῆ). When no evidence is forthcoming on behalf of the gods, Israel is called to testify in this contest of truth. "You are my witnesses (LXX—μάρτυρες) . . . and my servant whom I have chosen" (43:10, 13). In both 43:10 and 43:13 the LXX has two witnesses, adding God's witness (ἀγὼ μάρτυς) alongside Israel's, so that God's role in the courtroom involves judging, prosecuting, and witnessing. The truth to be established is that YHWH is the only God whose fulfilment of predictions demonstrates sovereign control of history. In this contest of truths Israel is being addressed, as can be seen when both its ability to be the witness and the content of that witness are summed up in the clause "so that you may know and believe and understand that I Am" (LXX 43:10—ἵνα γνῶτε καὶ πιστεύσητε καὶ συνῆτε ὅτι ἐγὼ εἰμι).

The courtroom scenes involving YHWH and Israel make clear that YHWH has become the defendant, the one accused by the Judeans in exile and those remaining in Jerusalem. The accusation is that YHWH has abandoned the people and been blind to their fate and deaf to their cries (cf. also 40:27). So in 43:26 YHWH invites the people to the courtroom—"Let us come to a judgment (LXX—κριθῶμεν); set forth your case, so that you may be proved right (LXX—δικαιωθῆς)." YHWH, however, is ready for this invited move, having already turned the people's accusations back on them and delivered an indictment. They are the ones who are deaf and blind because of their failure to perceive why their plight has come upon them (cf. 42:18–20). YHWH has not been inactive but is indeed the one who has brought about their plight as an expression of justified wrath at their disobedience (cf. 42:22–25). This use of courtroom scenes and motifs, however, is made within an overall context of reassurance where salvation oracles ensure that indictment is not YHWH's last word. Indeed, Deutero-Isaiah begins and ends on a note of assurance—"Comfort, O comfort my people, says your God" (40:1) and "For you shall go out in joy, and be led back in peace; the mountains and the hills before you shall burst into song, and all the trees of the field shall clap their hands" (55:12). An invitation

to this salvation is even extended to the nations, those from the ends of the earth (LXX—οἱ ἄπ' ἐσχάτου τῆς γῆς), if they will turn to YHWH (45:22, 23).

Terms and themes from the divine courtroom scenes spill over into the rest of Deutero-Isaiah. In the LXX the noun κρίσις, 'judgment,' occurs in 40:27; 42:1, 3, 4; 49:4, 25; 50:8, 9; 51:4, 7; 53:8; 54:17, and the verb κρίνειν, 'to judge,' in 49:25; 51:22. The ἐγώ εἰμι, "I Am," formula for YHWH's self-predication as the one true God is frequently employed. In addition to four occurrences in trial speeches (cf. 41:4; 43:10, 25; 45:18), the formula in this absolute form is also found in 46:4 (twice), 48:12, and 51:12. Elsewhere ἐγώ εἰμι is used with a predicate, for example, "I am the Lord" (45:8, 19), "I am God" (45:22; 46:9), "I am your God" (48:17), "I am the first" (48:12), "I am he who comforts you" (51:12), or "I am he who speaks" (52:6). In the courtroom scenes the evidence for YHWH as the one true God who is sovereign over history is provided by the continuity between God's predictive word and its fulfilment. This notion also appears in 42:9 and 46:10, 11 and is reinforced at the end in 55:11—"... so shall my word be that goes out from my mouth; it shall not return to me empty, but it shall accomplish that which I purpose, and succeed in the thing for which I sent it." For this reason YHWH can be said to proclaim the truth (45:19) and the function of witnesses is to experience and perceive the correspondence between YHWH's word and YHWH's deed so that they can confirm the truth of that word (41:26; 43:9). Israel's role as servant-witness entails bringing forth judgment to truth (LXX 42:3—εἰς ἀλήθειαν ἐξοίσει κρίσιν). YHWH's identity as the one God who speaks the truth, which the courtroom rhetoric establishes, is seen elsewhere as a concern for establishing YHWH's glory, the honor of his reputation. Indeed the claim is that YHWH has acted or refrained from acting for the sake of his name and will not give its glory to any other (cf., e.g., 42:8; 48:9–11). Yet YHWH will also choose to give glory to Israel, since thereby YHWH will be glorified—"You are my servant, Israel, and in you I will be glorified" (LXX 49:3; cf. 44:23; 45:25; 49:5; 55:5). The servant's witness is to be a light to the nations, exposing darkness and curing blindness (42:6, 7; 49:6, 9). In this calling of bringing justice the divine spirit will be upon the servant (42:1) and it can be said that God has sent both the servant and the spirit (LXX 48:16—καὶ νῦν κύριος ἀπέσταλκεν με καὶ τὸ πνεῦμα αὐτοῦ). Not only have the claims of YHWH been under dispute but also the vocation of the servant will be a contested one. According to 50:6–11, the servant will face abusive opposition and the language of the courtroom returns with adversaries who will confront, contend, and condemn. The servant is nevertheless confident that the courtroom is ultimately that of YHWH who will provide vindication. Though justice from humans is denied him (LXX 53:8—ἡ κρίσις αὐτοῦ ἤρθη), the servant will

be lifted up and glorified (LXX 52:13—ὑψωθήσεται καὶ δοξασθήσεται) and this will be with a glory not from humans (LXX 52:14—ἡ δόξα . . . ἀπὸ τῶν ἀνθρώπων).

3 Reworking of Deutero-Isaiah's Divine Courtroom Themes in the Gospel of John

These themes from and associated with Deutero-Isaiah's courtroom scenes are all replayed in GJ and in the process reconfigured. The cosmos remains the theatre in which the divine judgment proceedings are in play and the courtroom motif becomes even more of an overarching framework as Jesus' life and significance are depicted. In GJ the two controversies—between God and the nations and between God and Israel—are brought together, as the former becomes God's judgment process with the world and the latter is treated as an integral part of this, in which in fact those Jews who respond negatively in the new judgment process function now as major representatives of the unbelieving world.¹²

Whereas Deutero-Isaiah's courtroom scenes and their rhetoric function largely as metaphors for God's dealings with the nations of the world and with Israel that are meant to shape the imagination of the readers, in GJ the forensic metaphors are also linked to judicial and quasi-judicial events being played out in the actual lives of Jesus and his followers. The cosmic trial informs the narration of specific controversies between Jesus and 'the Jews' that function as mini-trials during his public mission, of a court scene at the Jewish council where a sentence is passed on Jesus in his absence (11:47–53), and of Jesus' trial before Pilate, where the Roman proconsul, as the chief representative of the nations, and the Jewish religious leaders, as the representatives of Israel, come together as the unbelieving world's opposition to God's agent and the truth of his witness. In this way the narrative involves an intricate mix of literal controversies and courtroom scenes and the corresponding judicial metaphor of a cosmic trial in which God is enacting salvific judgment. For GJ the latter provides the true perspective on the former and, through the use of the extended metaphor, God's lawsuit is not confined to human courtrooms or public sites of disputation but the divine courtroom, with the exposure of ultimate allegiances that it brings, invades the whole of human life.

It is the overarching metaphor, drawn from Deutero-Isaiah, that allows the various stages of controversy in GJ's narrative world to be seen as integral to

12 On this relationship, see esp. L. Kierspel, *The Jews and the World in the Fourth Gospel: Parallelism, Function, and Context* (WUNT 2/220; Tübingen: Mohr Siebeck, 2006).

the one judgment process of God putting the world on trial. This cosmic trial unfolds in two main stages—through the life of Jesus and then through the continuing witness of his followers and the Spirit. The first stage itself has two parts: the ongoing controversies or mini-trials with their failed attempts at carrying out an unofficial sentence during Jesus' mission¹³ and then the culminating trial before Pilate and the death sentence that this time is effected. It is this first stage that is the decisive one, since, through Jesus' death as his hour of glory and through the further vindication of the resurrection, God is to be seen as having already rendered the verdict that the judgment at the end of history will confirm (cf. 5:28, 29; 12:48). But in the meantime, there is a second stage that extends beyond the narrative into the time of the readers. During this time God's lawsuit continues through the witness of Jesus' followers and its case must still be argued in a world that has yet to recognize the authority of the verdict already rendered.

In the overall trial God is still, of course, the supreme judge but is represented now by Jesus as God's uniquely authorized agent. Jesus repeatedly employs the language of agency, describing himself as sent by God or the Father or speaking of God as the one who sent him, and in such contexts the verbs πέμπειν (25x) and ἀποστέλλειν (17x) are used interchangeably. People's response to Jesus as the sent one is therefore also their response to God as his sender (cf. 5:23, 24, 38; 12:44; 13:20). But for GJ this sending is not simply on a par with that of the prophets or other human agents of God; it is an extension into history of an intimate pre-existent relationship between the Logos and God, between the Son and the Father (cf., e.g., 1:1, 2, 18; 17:5). In his representation of God as judge, Jesus' mission statement about judging (9:39), cited above, is to be coupled with the one that follows in 10:10—"I have come that they might have life and have it in abundance"—because the goal of such judging is the positive verdict of life. Since in his judging Jesus is doing the will of the one who sent him (cf. 5:30; 12:48, 49), responsibility for judging can be attributed to either Jesus or God or both. Jesus can say that the Father judges no one but has given all judgment to the Son or the Son of Man (5:22, 27) but then state that God is the ultimate judge (8:50) and he himself judges no one (8:15). Immediately the latter statement is qualified by the dynamics of the sending relationship—"even if I do judge . . . I am not alone, but it is I and the Father who sent me" (8:16). Similarly, the witness of Jesus' words is formulated

13 The proposal of Parsenios, *Rhetoric and Drama*, 70 that the controversies during Jesus' mission should be seen as an investigation and that the only trial is that before Pilate does justice neither to the force of the overall metaphor nor to the attempts to enforce a sentence (cf., e.g., 5:18a; 7:1b, 25, 44, 45; 8:59; 10:31, 39), which go well beyond investigation.

in terms of his unique relationship to God and his sending by God. As the fully authorized agent, he speaks the words of the God who has sent him (cf. 3:33, 34). Like all human witnesses, Jesus speaks of what he has seen and heard, but there is a striking difference, because what Jesus has seen and heard and what becomes the content of his witness are heavenly things, the proceedings of the divine courtroom (3:11, 12). On occasion Jesus accedes, at least formally, to the legal demands that there should be more than one witness in his case (cf. 5:31; 8:17). But even such instances serve to highlight that ultimately Jesus is testifying about himself and his relation to God. Despite the law, such testimony is to be deemed to be true and self-authenticating because of Jesus' unique identity (8:14). At the same time the complete dependence of the Son as agent on the Father as authorizer enables their witness, like that of YHWH and the servant in LXX 43:10, to be depicted as a collaborative one—"I am the one who witnesses about myself and the Father who sent me witnesses about me" (8:18). And it is because Jesus' witness has this status that his words can also function as the criterion of judgment, either for condemnation or for eternal life, on the last day (12:48–50). In this way too Jesus takes on the various roles YHWH played in Deutero-Isaiah's courtroom scenes—judge, prosecutor, or accuser but also defendant or accused. In both the trial scenes of 5:19–47 and 8:12–59 with their disputations and interrogations he begins by having to defend against an accusing opposition the witness of his deeds or words and the claims they represent but then moves to counter-accusation and judgment. The latter include echoes of YHWH's accusations against Israel—"you have never heard" (5:37b, cf. LXX Isa 48:8)—and employ similar tactics of turning the tables on accusers as both Abraham and Moses, who have been used against him, are employed to indict the opposition (5:45–47; 8:33–40).

Because this Gospel views Jesus as the divine Logos become flesh, in his witness he is not only the divine representative but also takes on the role Israel was meant to have in the contest of truth as servant-witness and as light to the world, exposing darkness and opening the eyes of the blind (cf. 1:9; 3:19–21; 8:12; 9:1–12; 11:9, 10; 12:35, 36). Just as the witness of Deutero-Isaiah's servant would be contested and lead to abuse, suffering, and death but be vindicated in the divine courtroom, so it is in the case of Jesus. Indeed, in one of its distinctive formulations GJ employs the 'lifting up' language of the servant's vindication with a new double meaning that combines suffering and glorious vindication. In a threefold passion prediction Jesus asserts that as the Son of Man he will be lifted up in Roman-style execution on a cross that will also be his exaltation (ὑψόω—3:14; 8:28; 12:32–34). In the juridical setting of Deutero-Isaiah the divine glory or honor was seen to be at stake, a glory that would be bestowed on Israel, as YHWH would be glorified in the servant, in a way that

enhanced YHWH's own glory. Similarly, in GJ Jesus can state just before his passion, "Now the Son of Man has been glorified, and God has been glorified in him" (13:31). Because of the unity between Jesus and God, in this narrative's judgment process both God's glory and Jesus' glory are at stake. Its prologue indicates that this divine glory was present throughout Jesus' mission for those with eyes to see it ("we saw his glory"—1:14). In his public mission the witness of the signs in particular manifests Jesus' glory (cf. 2:11; 11:4, 40) and towards its end there is the announcement that the hour has come for the Son of Man to be glorified (12:23). During the mission Jesus asserts that it is the Father who seeks his glory and indeed glorifies him (8:50, 54) and the reason the divine prerogative of judging is delegated to Jesus is that all may honor the Son. So bound together is the honor of Jesus with that of God that "anyone who does not honor the Son does not honor the Father" (5:22, 23). The second half of the main narrative then depicts Jesus in the hour of his glory and invites its readers to see his departure from the world in death by crucifixion, which in normal evaluation would be seen as the greatest humiliation and shame, as in fact the supreme moment of that glory (cf. 13:31, 32; 17:1). The glory accompanying the vindication of Deutero-Isaiah's servant was not "from humans" and failure to see Jesus' glory is attributed to the opposition's judgment which has become so influenced by human conceptions of honor and glory that it does not employ the right criteria in evaluation and therefore cannot see divine glory when it is before their eyes (cf. 5:44; 7:18, 24; 12:43). In GJ's perspective the Logos does not lay aside divine glory in taking on flesh and in suffering; rather in Jesus his incarnation and death become vehicles for its expression.

The functions of Deutero-Isaiah's servant-witness and judge come together again in one of the more remarkable features of GJ. As witness, Israel was to believe, know, and testify to YHWH's being "I Am." Now the language found in LXX 43:10 is taken up as Jesus in his witness calls for his audience to believe (πιστεύσητε—8:24) and know (γνώσεσθε—8:28) that I am (ὅτι ἐγώ εἰμι). The difference is that this divine self-predication has become the witness' reference to himself. The narrative leaves no doubt about the significance of this formula on the lips of the main character, because immediately after the next of these pronouncements of ἐγώ εἰμι without a predicate in 8:58 there is the attempt to stone Jesus for blasphemy. Similarly, the possibility of simply taking the "I Am" of 18:5 as a straightforward identification of himself by Jesus to Judas and the accompanying police and soldiers is removed by the depiction of the latter's response, "they stepped back and fell to the ground" (18:6)—the typical response to a theophany. Significantly, this incident is the fulfillment of the other earlier saying that employs the absolute ἐγώ εἰμι when Jesus predicts his betrayal—"I tell you this now, before it occurs, so that when it does occur,

you may believe that I Am” (13:18, 19). In this way, as in Deutero-Isaiah, the evidence for the claim rests on the reliability of the claimant’s predictive word and its correspondence with what ensues. In having Jesus utter the divine self-predication, GJ indicates that witness and divine judge are to be seen as sharing the same identity.

Deutero-Isaiah depicts the divine Spirit as having been placed on the servant (42:1), promises a pouring out of the Spirit on the servant’s descendants (44:3), and speaks of the sending of the Spirit alongside the sending of the servant (48:16). The writer of GJ elaborates on this sending of the Spirit by linking it more closely to the courtroom theme, elaborating on the Spirit’s forensic roles in 13:31–16:33, the so-called Farewell Discourse, in which Jesus prepares his followers for the second stage of the cosmic trial. They are to continue his mission as servants (13:14–17; 15:20) and as witnesses—“You also are to testify because you have been with me from the beginning” (15:27). Like that of Jesus, their witness will be contested, and Jesus tells them that they will face the hatred of the world, expulsion from the synagogue, and even death (15:18–16:4). But the disciples will not be alone as they carry out their vocation; the Spirit will accompany them. On four occasions this Spirit is designated in a way distinctive to GJ, as *ὁ παράκλητος*, “the Paraclete” (14:16, 17, 26; 15:26; 16:7–15), and on three of these is further designated as “the Spirit of truth” (14:17; 15:26; 16:13). In this way the Spirit’s function is highlighted as advocacy for the truth of Jesus’ cause in the cosmic trial. In legal contexts *παράκλητος* has a clear primary connotation of advocacy (it became a loan word in Hebrew and Aramaic with similar force). It referred not to a professional legal office but to a person of influence, a patron or sponsor, who could be called into a court to speak on behalf of defendants or their cause.¹⁴ The most likely background for the term is in the Jewish Scriptures and Second Temple Judaism with their interest in intercessory figures who functioned as advocates, sometimes in the heavenly court, and whose advocacy could sometimes take the form of counter-accusation. A similar role for the Spirit in relation to Jesus’ followers is to be found already in the context of trials in the Synoptic tradition (cf. Mark 13:9–11;

14 T. G. Brown, *Spirit in the Writings of John: Johannine Pneumatology in Social-Scientific Perspective* (JSNTSup 253; London: T. & T. Clark, 2003), 170–234 rejects forensic connotations for the term ‘Paraclete’ in favor of a core meaning of broker or mediator as part of the patron-client model she applies to analysis of GJ. There is no doubt that the role of the Paraclete does have this broader mediating function but in a courtroom setting this clearly becomes more specifically one of advocacy. Brown’s insistence on ruling this out leads to a strained interpretation of 16:8–11, which fails to see that the world remains on trial before the divine judge.

Matt 10:17–20; Luke 12:11, 12) and that tradition is likely to have been the catalyst for the more explicitly forensic depiction of the Spirit here in GJ. In the first reference, in 14:16, Jesus calls the Spirit “another Paraclete,” underlining that his own mission has involved advocating both God’s and his own cause and that the Spirit, who will be sent, will be his successor, continuing his forensic role in the ongoing trial. Through that role the double witness required by the law will also be continued, because “When the Paraclete comes, . . . he will testify on my behalf” (15:26). Just as Jesus was accompanied by the witness of the Father, so now his followers are accompanied by the witness of the Spirit. This divine Advocate will aid disciples in their witness to the truth, because, as the Spirit of truth, he will guide them into all truth (16:13, 14; cf. also 14:26). He will maintain and enhance the reputation and honor of Jesus that have been at stake, since “he will glorify me” (16:14). As was the case with Jesus, the Spirit in his advocacy can move from witnessing to prosecuting, as he presses home the divine verdict in the trial, convicting the world about the issues in the trial and overturning its values and the criteria for judgment that it has used (16:7–11).¹⁵

4 Social Function of the Divine Courtroom and the Gospel of John

If we press further our earlier question as to why this biography of Jesus is shaped by such pervasive forensic features and why therefore the courtroom metaphors of Deutero-Isaiah had such an appeal to its author, we need to venture into the disputed question of the setting from which GJ emerged. The move from a text to its historical and social context is fraught with hermeneutical difficulties and a certain amount of inevitable circularity, especially in the case of an ancient text where there is also a paucity of supporting external data. What we are in search of here, then, is the most plausible hypothetical reconstruction of the broad contours of GJ’s setting that can be derived from clues provided by its narrative. The major clues are to be found in the nature of GJ’s Christology and the terms in which opponents within the narrative’s intra-Jewish debate dispute this and in the three references to followers of Jesus being expelled from the synagogue (9:22; 12:42; 16:2). In Deutero-Isaiah’s courtroom scenes, when the accusers, whether the nations or Israel, are invited to present their case, no case is forthcoming. In contrast, on various occasions in GJ the opponents of Jesus express their accusations or the narrator supplies them (cf. 5:18; 7:12, 27, 42, 52; 8:13, 48; 9:16, 24, 29; 10:21, 33). Most frequently the accusations arise from Jesus’ statements about his relationship to the one

15 On the various forensic roles of the Paraclete, cf. also Kensky, *Trying Man*, 230–32.

who sent him, whether these are Messianic claims or, more particularly, assertions about being Son to the Father that indicate, in the view of the opposition, that he is making himself equal to God and therefore, in terms of the Mosaic law, show him to be a blasphemer and sinner who was leading the people astray. Explicit claims by Jesus to this effect during his mission together with attempted refutation of them are all but absent from the Synoptic tradition. The debate makes sense only when Jesus' followers came to such convictions about him as a consequence of their belief in his resurrection and were met with resistance from other Jews. In this way the controversies of a later period are read back into the story of Jesus.

The first mention of Jesus' followers being made ἀποσυνάγωγος in 9:22 illustrates this perspective. Whereas in the farewell discourse Jesus predicts expulsion from the synagogue as a future event for his followers after his departure (cf. 16:2), here in the case of the man born blind (9:35), and then later in 12:42, this excommunication is depicted as already taking place. The narrator explains the unwillingness of the blind man's parents to identify Jesus as his healer as motivated by fear of the religious authorities—"for the Jews had already agreed that anyone who confessed Jesus to be the Messiah would be put out of the synagogue." This appears to be anachronistic on all counts. It requires that during his lifetime people in general and not just an inner group of disciples were confessing Jesus as Messiah and doing so in such numbers as to upset synagogue authorities. It then requires that those authorities had come to an agreement about how to act in such cases and that such action should take the form of expulsion from the synagogue. Furthermore it suggests that believing someone to be the Messiah would in itself be sufficient reason for such action, when, as the example of R. Akiba, who held Simon bar Koseba to be Messiah, attests, this belief might have been controversial but did not run the risk of expulsion. Holding this belief about someone who was perceived as a lawbreaker and as having died a shameful death doubtless made it more controversial but in fact what gave offense, as the rest of GJ's narrative makes clear, and what would have activated disciplinary measures for blasphemy and apostasy is the claim about the nature of this particular Messiah as the Son of God who was one with God the Father.

External evidence, beyond other New Testament texts, for such expulsiory action to have been taken against a group of Jewish Jesus-followers in the first century CE is disputed. It appears far more likely, however, that the nature and intensity of the controversies with opponents in GJ's narrative reflects the experience of such a group than that, as a few hold, these references are rhetoric meant to justify the voluntary withdrawal from the synagogue on the part of Jesus-followers. It is also far more likely that there were a range of synagogue responses to claims for Jesus that varied from toleration to

antagonism and that the experience reflected was in one particular location rather than the result of a general ban formulated at Jamnia and linked to the twelfth of the Eighteen Benedictions. It is also likely that the experience was a traumatic one that had involved interrogation and trial and that, since excommunication was a substitute for the earlier death penalty for apostasy and blasphemy, this decision entailed not only being cut off from the synagogue's meetings but also a much broader social ostracism and shaming. The detailed justification for such historical conclusions cannot be provided here.¹⁶ All that is needed for the present discussion is the plausible assumption that, whatever the actual history, the social memory of GJ's writer and those he represents (cf. the communal "we" in 1:14, 16; 3:11; 21:24 and the reference to "the brothers and sisters" in 21:23) recalls its recent past in terms of intense controversy within the synagogue resulting in their excommunication. No doubt the synagogue leaders would have had their own version of this past but this is how it was experienced and remembered by those this Gospel's writer represents. This collective memory has continued to have a major impact on his imagination and has significantly shaped his re-telling of the life of Jesus.

Gemser opened his seminal article on the *rib*-pattern by placing the lawsuit in the context of the frequency of quarrelling and disputes in Israelite life.¹⁷ This particular presentation of the life of Jesus emerges out of just such quarrelling and disputing. The impact of such factors on the genre of ancient biography should occasion no surprise. As Cox explains, "Biography was from its inception a genre that found its home in controversy. Biographers . . . were self-conscious mediators of specific traditions, and their works had both apologetic and polemical aims, apologetic in defending, affirming, and sometimes correcting opinion about a hero; polemical in suggesting by the strength of the defense, and sometimes by outright attack, the unworthiness of other traditions by comparison."¹⁸ It is also therefore no great surprise that GJ's author would find the metaphors of the *rib*-pattern as developed in Deutero-Isaiah

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- 16 See the discussion and interaction with secondary literature in Lincoln, *Truth on Trial*, 263–85. On what expulsion from the synagogue in the first century CE would have entailed, see also the dialogue between A. Reinhartz, "Why Comment? Reflections on Bible Commentaries in General and Andrew Lincoln's *The Gospel According to Saint John* in Particular," *JSNT* 29 (2007): 333–42 and A. T. Lincoln, "From Writing to Reception: Reflections on Commentating on the Gospel of John," *JSNT* 29 (2007): 353–72, esp. 360–69.
- 17 B. Gemser, "The *Rib*- or Controversy-Pattern in Hebrew Mentality," in *Wisdom in Israel and in the Ancient Near East* (ed. M. Noth and D. W. Thomas; VTSup 3; Leiden: Brill, 1955), 120–22.
- 18 P. Cox, *Biography in Late Antiquity: A Quest for the Holy Man* (Berkeley: University of California Press, 1983), 135.

congenial to his depiction of the significance of Jesus that had provoked this fierce first century CE dispute. For those on the side of the dispute from which GJ emerged and whose group memory included expulsion from the synagogue the divine courtroom metaphor served a similar rhetorical function as did that of Deutero-Isaiah for those who were affected by exile from Jerusalem and Judea. For the latter, their experience had called into question YHWH's promises of salvation and well-being for Israel and with them YHWH's claim to be the one true God whose just purposes were being worked out in history. The courtroom scenes, in reaffirming and establishing YHWH's identity and reliability and giving a new perspective on Babylon as oppressor, functioned as part of Deutero-Isaiah's overall message of consolation and reassurance. For those whose memory was of ostracism and excommunication from the synagogue and therefore from the majority group to which they had previously belonged, the author's reworking of the divine courtroom motif provided a means of reaffirming the identity of the God they believed to have been revealed decisively in Jesus, despite the consequences of this belief. It served to legitimize this conviction through the rehearsal of witnesses' arguments in a way that drew the sting from the opposition's counter-arguments, to give a higher court's judgment on the perceived miscarriages of justice in the case not only of the one in whom they believed but also of their experience, to reassure them, whatever their drawbacks of that experience, that life, well-being, and security were to be found in their relationship with Jesus rather than any other source, and to strengthen their resolve to continue in their own witness. Highlighting the theme of glory or reputation in this forensic context also enabled a new perspective on the humiliation of Jesus' death by crucifixion and on their own shaming through expulsion and ostracism. Through the divine judge's verdict, reversing human evaluations, both could be seen as a participation in divine glory.¹⁹

5 The Divine Courtroom, Readers, Judgment, and the Gospel of John

If the appeal to the divine courtroom functioned in this way for the writer and those he represents, what can be said about its impact for those for whom the GJ was written, its final audience or readers?²⁰ Throughout her perceptive and wide-ranging monograph Meira Kensky highlights that, despite the literary

19 On believers in Jesus sharing divine rather than human glory, see 5:44; 12:26, 43; 17:10, 22; 21:19.

20 The question assumes, of course, a distinction between the circle in which the Gospel was produced and the broader readership for whom the final product was intended.

divine courtroom having God or the gods as judge and humans on trial before them, the texts engage readers in critical evaluation of God's judgment so that inevitably the reading process becomes a judging process in which God is tried in the court of the reader.²¹ Hence, "when man is tried, it is truly God who is on trial."²² She makes clear, of course, that authors do their utmost to take into account their intended readers' perspectives on the issues and to persuade them to accept the point of view of their own presentations of the case but stresses that readers can be awkward customers who "do not always follow the text's directions, however manifold."²³ In the case of GJ this tension between the implied reader²⁴ and the real reader is worth pursuing briefly.

The communicative purpose of this interpretation of Jesus' life and significance is made explicit in 20:31—"so that you may believe [or continue to believe] that Jesus is the Messiah, the Son of God."²⁵ The use of the divine courtroom imagery in the presentation has been meant therefore to produce or reinforce a judgment about the identity of Jesus that the narrative has conveyed from the start. The specific consequences of such a belief for those whom the author represents are now in the past, however recent the source of this memory, but the cosmic trial metaphor allows the presentation to transcend any particular setting and to attempt to reinforce this conviction about Jesus for all its implied readers. Although the narrative presents a division of opinion about who Jesus is and depicts the disputes surrounding him, the narrator's point of view has already been made explicit in the prologue—Jesus is to be identified as the Logos who is one with God and has come as the light of life in salvific judgment of the world's darkness (1:1–9; cf. also 3:19–21). In order to appreciate the unfolding story, implied readers are expected to share this point of view and to have it confirmed by the time the narrative reaches its conclusion.

One of the major means of sustaining implied readers in the narrator's own judgment is the device of irony. As Jesus is interrogated, involved in judicial controversies, tried, sentenced, and executed, as various characters voice their

21 Kensky, *Trying Man*, e.g., 4–6, 9–12, 224, 343–46. See also Lincoln, *Truth on Trial*, 173–76 for discussion of recipients of rhetoric and of GJ's rhetoric in particular as jurors and judges.

22 Kensky, *Trying Man*, 5.

23 Ibid., 344.

24 The implied reader is, of course, already the product of the real reader's attempt to reconstruct from the clues provided by the author's persuasive techniques how his intended recipients are meant to respond most sympathetically to these techniques.

25 On πιστεύετε as the better attested reading and therefore the probability of the intention being that implied readers be encouraged to continue in their belief, see Lincoln, *Truth on Trial*, 177–78.

ignorance or misunderstanding, as double entendres are employed, implied readers can only appreciate what is really going on in the narrative if they are willing to accept the superior information that the narrator has supplied. Irony thrives on such distinctions between appearance and reality and between the elevated perspective of the readers over that of the characters in the narrative. In GJ these distinctions are closely associated with the divine courtroom metaphor. In the words of its protagonist, "Do not judge by appearances, but judge with right judgment" (7:24) and "You judge according to the flesh . . . my judgment is valid; for it is not I alone who judge, but I and the Father who sent me" (8:15, 16). The narrative depicts Jesus in terms of "above" and as descending and ascending (cf., e.g., 3:31; 6:33, 62; 8:23) and associates the opposition with "below" or this world or merely human standards (cf., e.g., 8:15, 23; 12:31; 18:36). The reworking of the metaphor of the cosmic lawsuit from Deutero-Isaiah provides a major part of this perspective from above, which is also provided in the witness of Jesus. "The one who comes from above is above all; the one who is of the earth belongs to the earth and speaks about earthly things. The one who comes from heaven is above all. He testifies to what he has seen and heard, yet no one accepts his testimony" (3:31, 32; cf. also 8:14). Knowing that in his testimony Jesus also represents the divine judge (e.g., 5:22; 9:39) and knowing the purposes of the divine courtroom enable implied readers to see the disputes, interrogations, and decisions of this world's courts in the appropriate perspective. Frequently that perspective involves dramatic ironic reversals of the judgments of characters in the narrative. These occur throughout but can be seen clearly at the end in the trial before Pilate and in the carrying out of the sentence of death.

It is the perspective of the divine courtroom that enables implied readers to pick up the clues in 18:28–19:16a that, while ostensibly Jesus is the accused before "the Jews" and Pilate, facing the charges that he deserves to die because, contrary to the law, he has claimed to be Son of God (19:7) and that he is an insurrectionary who is a threat to Caesar (19:12), he is not truly the accused. From the narrator's point of view, in reality it is the Jewish religious leaders and Pilate who find themselves accused and condemned before Jesus as judge and his witness to the truth (cf. 18:37, 38; 19:11, 15b).²⁶ The reversal here is not simply the establishing of Jesus' innocence in contrast to the guilty verdict of human judges. Because of the nature of the charges on which Jesus was found guilty, it is a reversal of the evaluation of who Jesus is. The reworking of

26 On the reversals in the trial before Pilate, see, e.g., Lincoln, *Truth on Trial*, 25–26, 123–38; K. B. Larsen, *Recognizing the Stranger: Recognition Scenes in the Gospel of John* (Leiden: Brill, 2008), 173–80; Parsenios, *Rhetoric and Drama*, 37–39; Kensky, *Trying Man*, 233–41.

Deutero-Isaianic motifs reinforces that it is not merely forensic issues of guilt or innocence that are in view but a verdict about Jesus' identity.²⁷ In the scene of crucifixion and death (19:16b–37) Jesus' last word, in keeping with GJ's presentation of his crucifixion as glorification, is τετέλεσται, "it is completed," an assertion of achievement, signifying the completion of his mission, the work he had been given to do (cf. 17:4). Contrary to appearances, the perspective from the divine courtroom means that Jesus' witness to the truth about God and God's purposes for humanity is to be seen in his martyr's death. In a supreme reversal God is revealed in this death that appears to be most ungodlike, and God's glory and reputation are displayed in the shame and humiliation of this crucifixion. Contrary to appearances, the metaphor of the divine trial means that Jesus' work of judging is accomplished as the judge becomes the one who is judged. Jesus' death is not simply the world's negative judgment on him but also God's positive judgment on both him and the world. By absorbing the negative verdict of death, Jesus is shown to be the source of the positive verdict of life, as blood and water flow from his side and as the Beloved Disciple adds his testimony to this truth (19:34, 35). Within the frame of reference of the Gospel, both Jesus' blood (cf. 6:53, 54) and Jesus as the source of water (cf. esp. 7:38, 39) point unmistakably to the theme of life, seen here as God's salvific verdict on the death of the one who has been presented as the divine agent in his mission of witnessing and judging.

Implied readers are clearly expected to share this divine judgment on Jesus, his identity, and his mission. But what of real readers? The judgments of the truth of this written testimony by the jury of real readers will be as varied as the jurors themselves and will inevitably be shaped by the variety of influences, including the prior allegiances, life experiences, worldviews, cultural settings, commitments to particular communities, elements of trust or suspicion, they bring to their reading. Interestingly, there is a sense in which, whatever their

27 My focus on the lawsuit motif has apparently led some to misinterpret my earlier work as having dealt exclusively with issues of the guilt or innocence of Jesus and to ignore its major emphasis on how coming to a true recognition of Jesus' identity is integral to the use of that motif. In particular, my critique of one aspect of Culpepper's early work on recognition scenes in the plot—its reliance on Aristotle's definition of recognition—has been misread as a complete dismissal of this important aspect of the Gospel (e.g., J. A. Brant, *Dialogue and Drama: Elements of Greek Tragedy in the Gospel of John* [Peabody, Mass.: Hendrickson, 2004], 234; idem, *John* [Grand Rapids, Mich.: Baker Academic, 2011], 11; Larsen, *Recognizing the Stranger*, 15 n. 45; Parsenius, *Rhetoric and Drama*, 91). Parsenius, *Rhetoric and Drama*, 90–94 has now provided a helpful treatment of the compatibility of the lawsuit motif with the various aspects of recognition scenes that are reworked in the narrative.

judgment, real readers are in a similar position to those characters in the narrative who, in cross-examining Jesus in order to judge him, find themselves exposed and judged. In having to make a judgment on GJ's witness they are also being judged, as their own basic allegiances are revealed by the nature of their readings and they become aware that, if that witness is not accepted, some other verdict about God, justice, and life is being preferred and endorsed. Adele Reinhartz, as a Jewish New Testament scholar, envisages four readerly stances in relation to GJ—compliant, resistant, sympathetic, and engaged—and provides readings from each, while recognizing that the first two are to a large extent scripted by the text, that actual readers may well move between all four in the process of reading and that, for her, the last entails the inability to accept this Gospel's Christology and rhetoric of binary opposition.²⁸ As a Christian New Testament scholar, I have advocated a judgment of GJ's witness in terms of a critical appropriation, which, while eschewing the notion of the autonomy of critical reason and an accompanying disdain for any knowledge based on testimony, sees itself in the context of faith seeking understanding. In that context such a judgment is part of an ongoing tradition of theological debate which, in appropriating its canon's core witness to Jesus Christ for new and different settings, is engaged in critical discrimination between that witness and the particular formulations, including those of GJ, in which it originally came to expression.²⁹ In this context, then, judging is not a zero-sum game. Both aspects—divine judging of humans and human judging of God in response—can be fully operational at the same time without detracting from each other. Human judging becomes the means of cooperation in the divine dialogue that constitutes God's communication with the world.

This is not the place to pursue and engage in dialogue between particular readerly judgments, but the mention of ongoing debate appropriately leads into some concluding observations about the reception of the testimony of GJ. For later Christian theological reflection on Christ and the triune God this Gospel, emerging from a setting of passionate intra-Jewish disagreement about one group's convictions about Jesus and in all probability having its eventual presentation of those convictions honed, sharpened, and intensified in the light of that conflict, arguably turned out to be the most influential New Testament document. In such later interpretation the original contested nature of its Christology and its explicit framing of the life of Jesus and its disputed significance in the imagery of the divine courtroom were

28 A. Reinhartz, *Befriending the Beloved Disciple: A Jewish Reading of the Gospel of John* (New York: Continuum, 2001).

29 Lincoln, *Truth on Trial*, esp. 181–82, 339–40, 354–69.

largely neglected. The divine courtroom featured much more as part of the presentation of a future end-time judgment, with writings such as the Gospel of Matthew and Revelation being particularly significant in shaping Christian thought. As regards the present impact of divine courtroom imagery, GJ was to be eclipsed by the influence of Paul's thinking about humans being justified before the divine judge through faith in Christ. In another sense, however, the fierce dispute that colors GJ's central message about the identity of Jesus has continued to surround its interpretation so that in effect, even among those who recognized its authority, its true witness was judged to be a decisive but by no means final word. Almost immediately, in fact, its Christology became a matter of dispute in the circle from which the Gospel emerged. As the author of the letters of 1 and 2 John indicates, a group, which in his view deviated from the received tradition, seceded from the majority owing to a refusal to confess that Christ had come in the flesh (cf. 1 John 2:18–23; 4:2, 3; 2 John 7). The witness of the Gospel had assumed the full humanity of Jesus of Nazareth (indeed the prologue's "the Word became flesh" makes this assumption explicit) but, because of the nature of the dispute that lies behind it, had focused instead on his divine identity. It is plausibly held that the secessionists took this latter emphasis even further, and, without sharing the Gospel's presuppositions, held the view that Christ's humanity was unimportant for salvation and that he only appeared to be human. Later, in the second and third centuries CE, Irenaeus and then others engaged in controversy with Gnostic writers such as Valentinus and Ptolemy over the latter's appropriation of Johannine vocabulary and Christology to their views of pleromatic aeons and syzygies.³⁰ In the fourth century GJ was again the site of controversy as both sides in the Christological disputes appealed to it for textual ammunition before its language eventually shaped the creedal statements resulting from the controversy both at Nicea in 325 and Constantinople in 381. For contemporary Christians the testimony of GJ to Jesus of Nazareth, framed in and molded by the divine courtroom metaphor, continues to be a major source both of their distinctive religious identity and witness and of further disputed judgments about its implications. What is to be made of its seemingly exclusive claim that God is to be known decisively through Jesus? How does one coherently hold and articulate that this particular Jew could be fully human and yet fully one with God? Does belief in Jesus as the incarnation of God redefine or break the bounds of Jewish monotheism?

30 This is not to be confused with the now debunked view that, owing to its capture by Gnostics, GJ had become controversial and fallen into disuse until rescued by Irenaeus and the orthodox; see C. E. Hill, *The Johannine Corpus in the Early Church* (Oxford: Oxford University Press, 2004).

In what sense was his death that of “the crucified God”? Are supersessionism and anti-Judaism the inevitable accompaniments of a high Christology? Do Jews and Christians still worship the same God despite their profound differences about the significance of Jesus? With these and other questions readers of the GJ’s witness under very different circumstances still find themselves drawn into the divine courtroom and confronted not only with its remarkable claim that in the life and death of Jesus the divine judge was judged in order to provide life but also with the necessity of making their own judgments about such a claim and its implications.

Trying the Crime of Abuse of Royal Authority in the Divine Courtroom and the Incident of Naboth's Vineyard

*F. Rachel Magdalene**

Both R. Westbrook and I have argued separately that a claim of abuse of power or authority (herein called simply “abuse of authority”) was actionable at law in the greater ancient Near East.¹ When humans with political or economic power abused their power, their superiors or, if necessary, the king would hear these cases in order to protect those with less power. Several Mesopotamian documents and the Hebrew Bible attest to this. A difficulty arose, however, when a king abused his royal authority because no higher human authority could hear the case. This article argues that, in the Hebrew Bible, YHWH and, at times, the whole Divine Council would intervene in these situations and try the case in the divine courtroom in order to maintain justice. Often a royal prophet would accuse the king as YHWH's or the Council's agent. In other instances, the prophet would announce the heavenly verdict to the king. The incident concerning Naboth's vineyard—which is found primarily in 1 Kings 21 but is also discussed in 1 Kings 22 and 2 Kings 9–10—is one of the key texts

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1 R. Westbrook, “The Abuse of Power,” in *Studies in Biblical and Cuneiform Law* (Paris: Gabalda, 1988), 9–38; and F. R. Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job* (BJS 348; Providence, R.I.: Brown Judaic Studies, 2007), 145–55. I first began to develop the ideas of this article in Magdalene, *On the Scales*. Here, I expand my brief discussion of Ahab and Jezebel's abuse of royal and judicial authority (*On the Scales*, 158, cf. 164) and refine several other concepts. I wish to thank Cornelia Wunsch for reading drafts of this paper, for offering several helpful suggestions, and, as always, being my ready guide in all things Assyriological. It took a small village to locate all the necessary resources for this article: I am most grateful for the bibliographic assistance of Robert Foster, Michelle Grimm, Raik Heckl, Sang Soo Hyun, Takayoshi Oshima, and Cornelia Wunsch. I also owe thanks to the editors of this volume for organizing and inviting me to attend the conference at the Benjamin N. Cardozo School of Law at Yeshiva University in February 2012 on the important topic of the divine courtroom, where I received much helpful feedback. My gratitude is due especially to Ari Mermelstein and Shalom Holtz who performed faithfully the monumental task of editing this piece. Of course, all remaining errors are ultimately mine.

where this principle is operating. YHWH strikes down Jezebel, Ahab, and their descendants because Jezebel and Ahab abused their royal authority by bringing a false charge of blasphemy against Naboth in order to take his ancestral lands. Thus, this article explores the role of the divine courtroom in effecting a remedy for abuse of royal authority in ancient Israel and argues that this aspect of divine justice was a critical factor in maintaining its entire system of social justice.

I read the text synchronically (to the extent possible), as literature, in its final form. The narrative provokes no end of questions about oral and written sources, compositional layers, redaction, and dating of the various layers both within and across chapters, as well as their relationship to each other intertextually and in terms of relative dating. The secondary literature is extensive.²

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- 2 These materials come from multiple sources, which came together over an extended period of time. The textual disjunctions range from large to small, including substantial differences in the report of the oracle of verdict and sentence to, when 1 Kgs 21:1, 19; 22:38; and 2 Kgs 9:25–26 are read together, the question of precisely whether Naboth owned a vineyard or a field and whether it was located in the city or to the rural north. For those who suggest multiple sources, see, i.a., K. Baltzer, “Naboths Weinberg (1 Kön. 21). Der Konflikt zwischen israelitischem und kanaänäischem Bodenrecht,” *Wort und Dienst* ns 8 (1965): 74–75; J. Gray, *I & II Kings: A Commentary* (OTL; 1st ed.; Philadelphia: Westminster, 1963), 494; B. Halpern and A. Lemaire, “The Composition of Kings,” in *The Books of Kings: Sources, Composition, Historiography and Reception* (ed. A. Lemaire, B. Halpern, and M. J. Adams; VTSup 129; Leiden: Brill, 2010), 139–40, 145–46; B. Halpern and D. S. Vanderhooft, “Editions of Kings in the 7th–6th Centuries BCE,” *HUCA* 62 (1991): 212, 230–33; G. N. Knoppers, “Theories of the Redaction(s) of Kings,” in *Books of Kings*, 80; B. O. Long, “Historical Narrative and the Fictionalizing Imagination,” *FT* 35 (1985): 405 n. 3; J. M. Miller, “The Elisha Cycle and the Accounts of the Omride Wars,” *JBL* 85 (1966): 441–54; idem, “The Fall of the House of Ahab,” *VT* 17 (1967): 308–17; N. M. Sarna, “Naboth’s Vineyard Revisited (1 Kings 21),” in *Tehilla le-Moshe: Biblical and Judaic Studies in Honor of Moshe Greenberg* (ed. M. Cogan, B. L. Eichler, and J. H. Tigay; Winona Lake, Ind.: Eisenbrauns, 1997), 124; W. M. Schniedewind, “History and Interpretation: The Religion of Ahab and Manasseh in the Book of Kings,” *CBQ* 33 (1993): 653–57; J. A. Soggin, *A History of Ancient Israel* (trans. J. Bowden; Philadelphia: Westminster, 1984), 207; W. Thiel, “Erwägungen zur aramäisch-israelitischen Geschichte im 9. Jh. v. Chr.,” in *Nachdenken über Israel, Bibel und Theologie: Festschrift für Klaus-Dietrich Schunck zu seinem 65. Geburtstag* (ed. H. M. Niemann, M. Augustin, and W. H. Schmidt; Frankfurt am Main: Peter Lang, 1994): 117–31; S. Timm, *Die Dynastie Omri: Quellen und Untersuchungen zur Geschichte Israels im 9. Jahrhundert vor Christus* (FRLANT 124; Göttingen: Vandenhoeck & Ruprecht, 1982), 118–21; J. T. Walsh, “Naboth,” *ABD*, 4:978; and H. Weippert, “Ahab el campeador? Redaktionsgeschichtliche Untersuchungen zu 1 Kön 22,” *Bib* 69 (1988): 457–79. Composition questions also exist within the primary chapters under discussion (1 Kings 20–22 and 2 Kings 9–10). The vast literature concerning the layers in 1 Kings 21 alone, prior to 2005, are summarized in P. T. Cronauer, *The Stories About Naboth the Jezreelite: A Source, Composition, and Redaction Investigation of 1 Kings 21 and Passages in 2 Kings 9*

Among the questions are whether or not 1 Kings 20–22 was always a continuous narrative unit and whether the original stories contained in chapters 20 and 22 related also to Ahab rather than some other king of the Omride dynasty. Even though these are essential inquiries, the final form of the text places chapters 20–22 together because they make literary sense as a unit. Most readings of the incident of Naboth's vineyard only attend to 1 Kings 21 and 2 Kings 9. Rare, however, are the readings that also include any discussion of 1 Kings 20; 22 and 2 Kings 10. This reading hopes to expand that number.

My thinking is this: I wish to examine what the texts related to the incident of Naboth's vineyard—which are fundamentally literary, theological, and ideological to my mind, although they may indeed reflect some real history (including legal history)—say together on the question of abuse of royal authority and its handling in the divine courtroom. All literature, it seems to me, is metaphorical,³ and literature about the goings-on in the heavenly realm can never be anything but both metaphorical and mythological.⁴ Yet, these metaphors and myths are built from real experience, theological beliefs, and ideologies of all sorts held by the authors and redactors of the text. In studying these texts, much helpful material about the history, social contexts, and beliefs can, therefore, be uncovered. My goal here is to understand better the role of the divine court in abuse of authority cases, especially in the incident involving Naboth and his vineyard, as it was comprehended in the worldview of the writers and editors of the Hebrew Bible. My method will combine traditional biblical exegesis, narrative criticism, and comparative legal historical ancient Near Eastern study, wherein I will use documents from Mesopotamia to support my narratological, theological, and legal claims.

In proceeding, I will begin with the role of the divine courtroom in trying human wrongdoing within the worldview of the ancient Near East. I will

(Library of Hebrew Bible/Old Testament Studies; New York and London: T&T Clark, 2005), esp. 207–10. Since 2005, see, i.a., N. Na'aman, "Naboth's Vineyard and the Foundation of Jezreel," *JSTOT* 33 (2008): 197–207, 212 (with extensive recent bibliography); D. Pruin, "What is a Text?—Searching for Jezebel," in *Ahab Agonistes: The Rise and Fall of the Omri Dynasty* (ed. L. L. Grabbe; LHBOTS 421; London and New York: T&T Clark, 2007), 212; and Schniedewind, "History and Interpretation," 653–55. This narratological synchronic reading is not intended to minimize the compositional concerns regarding these pericopes. These investigations are, for the most part, simply beyond the scope and needs of this study, which is more interested in the final version of the texts in question.

3 D. Robertson, *The Old Testament and the Literary Critic* (Guides to Biblical Scholarship; Philadelphia: Fortress, 1977), 5.

4 F. R. Magdalene, "Through a Glass Lawyerly: Reading Law in the Book of Job," in *Law and Narrative in the Bible and in Neighbouring Ancient Cultures* (ed. K. P. Adam, F. Avemarie, and N. Wazana; FAT II/54; Tübingen: Mohr-Siebeck, 2012), 123–27.

discuss next what we currently know about the legal claim of abuse of authority from the literature and documents of practice of the ancient Near East. Both of the above will then be brought to bear on the incident concerning Naboth's vineyard as I read the narrative. Finally, I will compare the cases of Naboth and Job because the cases contain some important similarities; that is, they both involve an abuse of power using a false charge of blasphemy, although the Joban material is even stronger in mythological material than is the material concerning Naboth. Nevertheless, the similarities in Job's story to that of Naboth outweigh the differences for my purposes, and, thus, Job can shed additional light on the events concerning Naboth's vineyard.

Trying Human Wrongdoing in the Divine Courtroom

In prior work, I have argued at length that a number of Mesopotamia's ritual incantation texts, prayers, psalms, and theodicies reflect the important role of the divine court in trying and righting human wrongdoing.⁵ These same ideas are also found in the Hebrew Bible. Indeed, this worldview was pervasive in the ancient Near East. Gods and goddesses, throughout the ancient Near East, are understood as lawmakers, lawgivers, and law-sustainers: they create and maintain justice. The king, as their primary legal agent, is responsible for communicating this system of justice and ensuring that all proceeds in a fair manner.⁶ Yet, the gods and goddesses do not surrender their role in justice entirely to

5 Magdalene, *On the Scales*, 13–25; see also eadem, “The ANE Legal Origins of Impairment as Theological Disability and the Book of Job,” *Perspectives in Religious Studies* 34 (2007): 27–38.

6 See, e.g., F. C. Fensham, “Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Tradition,” *JNES* 21 (1962): 129–39; B. S. Levinson, “The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah,” *VT* 51 (2001): 511–34; E. Otto, “Neue Aspekte zum keilschriftlichen Prozeßrecht in Babylonien und Assyrien,” *ZABR* 4 (1998): 268; G. Ries, *Prolog und Epilog in Gesetzen des Altertums* (Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 76; Munich: Beck, 1983); M. T. Roth, *Law Collections from Mesopotamia and Asia Minor* (2d ed.; SBLWAW 6; Atlanta: Scholars Press, 1997), 2–3; M. Weinfeld, “Judge and Officer in Ancient Israel and in the Ancient Near East,” *IOS* 7 (1977): 73; and K. W. Whitelam, *Just King: Monarchical Judicial Authority in Ancient Israel* (JSOTSup 12; Sheffield: JSOT Press, 1979). Westbrook also notes that the king not only stood at the head of the court system like a modern court of appeal, but “[h]e also had discretionary authority to act entirely outside the system when it failed to do justice” (*Studies in Biblical and Cuneiform Law* [Paris: Gabalda, 1988], 134). The prose materials of the Laws of Ur-Nammu, the Laws of Lipit-Ishtar, and the Laws of Hammurabi disclose the ancient Near Eastern understanding of the king's role in establishing and maintaining justice.

the king. Rather, they continue to have a hand in the legal system, functioning as judges in the maintenance of justice.⁷ They try human sin—actual or intended, witting or unwitting. Sometimes the divine court acts in cases where the human court could not or would not act. In other cases, the divine court acts in addition to the human court. I now review these basic concepts.

In Mesopotamia

W. G. Lambert explains the origins of these ideas, maintaining that the rise of law gave rise to wisdom being cast in terms of law: "If, in the microcosm, a matter could be taken to law and redress secured, why, in the macrocosm, should one not take up a matter with the gods?"⁸ A plethora of ancient Near Eastern texts indicate that suffering could be attributed to natural causes,⁹ witchcraft,¹⁰

7 See, e.g., F. A. Vanderburgh, "A Hymn to Mullil: Tablet 29615, CT. xv, Plates 7, 8, and 9," *JAOS* 30 (1910): 318, lines 55–60; A. Lenzi, "An OB Ikribu-like Prayer to Shamash and Adad," in *Reading Akkadian Prayers and Hymns: An Introduction* (ed. A. Lenzi; Ancient Near East Monographs 3; Atlanta: Society of Biblical Literature, 2011), 83–104.

8 W. G. Lambert, *Babylonian Wisdom Literature* (Oxford: Clarendon, 1960), 10.

9 See, e.g., T. J. Collins, "Natural Illness in Babylonian Medical Incantations" (Ph.D. diss., University of Chicago, 1999); J. C. Fincke, *Augenleiden nach keilschriftlichen Quellen, Untersuchungen zur altorientalischen Medizin* (Würzburger medizinhistorische Forschungen 70; Würzburg: Königshausen & Neumann, 2000); P. Heeßel, *Babylonisch-assyrische Diagnostik* (AOAT 43; Münster: Ugarit, 2000); idem, "Diagnosis, Divination and Disease: Towards an Understanding of the Rationale Behind The Babylonian Diagnostic Handbook," in *Magic and Rationality in Ancient Near Eastern and Greco-Roman Medicine* (ed. H. F. J. Hortmanshoff and M. Stol; Studies in Ancient Medicine 27; Leiden: Brill, 2004), 97–116; and J. Scurlock and B. R. Andersen, *Diagnoses in Assyrian and Babylonian Medicine: Ancient Sources, Translations, and Modern Medical Analyses* (Urbana, Ill.: University of Illinois Press, 2005), 429–528.

10 See, e.g., (I.) T. Abusch, "The Internalization of Suffering and Illness in Mesopotamia: A Development in Mesopotamian Witchcraft Literature," *Studi epigrafici e linguistici sul Vicino Oriente Antico* 15 (1998): 49–58; idem, "Witchcraft and the Anger of the Personal God," in *Mesopotamian Magic: Textual, Historical, and Interpretative Perspectives* (ed. [I.] T. Abusch and K. van der Toorn; Studies in Ancient Magic and Divination 1; Groningen: STYX, 1999): 83–121; idem, *Mesopotamian Witchcraft: Toward a History and Understanding of Babylonian Witchcraft Beliefs and Literature* (Studies in Ancient Magic and Divination 5; Leiden: Brill, 2002); idem, "Witchcraft, Impotence, and Indigestion," in *Disease in Babylonia* (ed. I. L. Finkel and M. J. Geller; Cuneiform Monographs 36; Leiden: Brill, 2007), 146–59; M. J. Geller, "A New Piece of Witchcraft," in *DUMU-E2–DUB-BA-A: Studies in Honor of Åke W. Sjöberg* (ed. H. Behrens, D. Loding, and M. T. Roth; Occasional Publications of the Samuel Noah Kramer Fund 11; Philadelphia: University of Pennsylvania Museum, 1989), 193–205; C. Halton, "An Incantation-Prayer: Girra 2," in *Reading Akkadian Prayers and Hymns*, 145–56; and D. Schwemer, "Evil Witches, Apotropaic Plants and the New Moon," *wo* 41 (2011): 177–87.

demons,¹¹ angry or unsettled ghosts,¹² and other supernatural causes,¹³ and that the sufferer would approach the gods for assistance in bringing the affliction to an end.¹⁴ T. Jacobsen expounds:

The possibility of going to law against wrongdoers of any kind is utilized on a cosmic scale by the incantations that deal with the baneful activities of ghosts or demons of illness preying upon the living. In such a case the victim can sue them before the sun god, who judges in the netherworld during the night, or before Gilgamesh and the other judges of the netherworld. He can even call upon the deceased members of his family to turn up at the proceedings and help his case. The judges are asked to arrest the evil ghost or demon and return it to the prison in the netherworld from which it has escaped.¹⁵

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- 11 See, e.g., H.-W. Fischer-Elfert, "Sāmānu on the Nile: The Transfer of a Near Eastern Demon and Magico-Medical Concept into New Kingdom Egypt," in *Ramesside Studies in Honour of K. A. Kitchen* (ed. M. Collier and S. Snape; Bolton: Rutherford Press, 2011), 189–98; W. Farber, "Lamaštu: Agent of a Specific Disease or a Generic Destroyer of Health," in *Disease in Babylonia*, 137–45; J. Peterson, "A Ritual Against Acid Reflux Caused by a Demon?" *NABU* (2009): 43–46, no. 34; J. A. Scurlock, "Baby-Snatching Demons, Restless Souls, and the Dangers of Childbirth," *Incognita* 2 (1991): 137–85; R. C. Thompson, *The Devils and Evil Spirits of Babylonia* (vol. 1; Luzac's Semitic Text and Translation Series 14; London: Luzac, 1903); and F. A. M. Wiggermann, *Mesopotamian Protective Spirits: The Ritual Texts* (Cuneiform Monographs 1; Groningen: STYX, 1992).
 - 12 See, e.g., W. Farber, "How to Marry a Disease: Epidemics, Contagion, and a Magic Ritual against the 'Hand of a Ghost,'" in *Magic and Rationality in Ancient Near Eastern and Graeco-Roman Medicine*, 115–32; J. A. Scurlock, *Magico-Medical Means of Treating Ghost-induced Illnesses in Ancient Mesopotamia* (Studies in Ancient Magic and Divination 3; Leiden: Brill, 2006); and R. C. Thompson, "Assyrian Prescriptions for the 'Hand of a Ghost,'" *JRAS* (October, 1929): 810–23.
 - 13 See, e.g., M. J. Geller, "An Incantation against Curses," in *Festschrift für Rykle Borger zu seinem 65. Geburtstag am 24. Mai 1994* (ed. S. M. Maul; Cuneiform Monographs 10; Groningen: STYX, 1998), 127–40.
 - 14 The literature on ancient Near Eastern medicine alone is growing rapidly and too vast to list here. For fuller bibliographies, see M. J. Geller, *Ancient Babylonian Medicine: Theory and Practice* (Ancient Cultures; Oxford: Wiley-Blackwell, 2010), 202–10; and L. Verderame, "A Bibliography of Ancient Mesopotamian," *Journal des Médecines Cunéiformes* 20 (2012): 1–42.
 - 15 T. Jacobsen, *Treasures of Darkness: A History of Mesopotamian Religion* (New Haven: Yale University Press, 1976), 86.

The gods served as the court of last resort over the cosmos and could rectify all wrongs. Significantly, sufferers often believed that it was the gods and goddesses themselves who brought an affliction or other catastrophe upon the afflicted.¹⁶ N. P. Heeßel states in the context of sickness: "The reasons for being taken ill were understood to lie on the human side: known or unknown breaking of taboos, committing crimes or violations of moral standards by the sick himself . . . were thought to result in illness, and also in other forms of misfortune such as financial loss or bad reputation."¹⁷ Where one had committed a serious wrong, a god or goddess would try the human in a summary trial, in which the accused neither appeared nor testified, bring forth the verdict, and execute divine punishment; that is, bring catastrophes of all kinds.¹⁸ When the entire community was involved in sin, either directly or indirectly by failing to prosecute such crimes in a human court, the entire community might also be punished and suffer harm.¹⁹

16 See among many others H. Avalos, *Illness and Health Care in the Ancient Near East: The Role of the Temple in Greece, Mesopotamia, and Israel* (HSM 54; Atlanta: Scholars Press, 1995), 129–42, 185–92; G. Cunningham, "Deliver Me from Evil": *Mesopotamian Incantations 2500–1500 BC* (Studia Pohl Series Maior 17; Rome: Pontifical Biblical Institute, 1997); E. Ebeling, *Die Akkadische Gebetsserie "Handerhebung"* (Deutsche Akademie der Wissenschaften zu Berlin, Institut für Orientforschung 20; Berlin: Akademie-Verlag, 1953); J. C. Fincke, "mūt ilī-šu mātu, 'To Die a Death (Decreed by) His God,'" *NABU* (2013): 124–25, no. 75; I. L. Finkel, "A Study in Scarlet: Incantations against Samana," in *Fs. Borger*, 71–106; Geller, *Ancient Babylonian Medicine*; idem, *Forerunners to Udug-Hul: Sumerian Exorcistic Incantations* (Stuttgart: Franz Steiner, 1983); L. W. King, *Babylonian Magic and Sorcery* (London: Luzac, 1896); J. V. Kinnier Wilson, "Medicine in the Land and Times of the Old Testament," in *Studies in the Period of David and Solomon* (ed. T. Ishida; Winona Lake, Ind.: Eisenbrauns, 1982), 337–75, esp. 349; R. Labat, *Traité akkadien de diagnostics et pronostics médicaux* (Leiden: Brill, 1951); O. Loretz and W. R. Mayer, *Šu-ila Gebete: Supplement zu L. W. King, Babylonian Magic and Sorcery* (AOAT 34; Kevelaer and Neukirchen-Vluyn: Butzon & Bercker, 1978); W. R. Mayer, *Untersuchungen zur Formensprache der babylonischen "Gebetsbeschwörungen"* (Studia Pohl, series maior / Dissertationes scientificae de Rebus Orientis Antiqui 5; Rome: Pontifical Biblical Institute, 1976); J. Nougayrol, "Présages médicaux de l'haruspincine babylonienne," *Semitica* 6 (1956): 1–14; T. Oshima, *Babylonian Prayers to Marduk* (Orientalische Religionen in der Antike 7; Tübingen: Mohr Siebeck, 2011); and K. van der Toorn, *Sin and Sanction in Israel and Mesopotamia* (Assen/Maastricht: Van Gorcum, 1985).

17 Heeßel, "Diagnosis, Divination and Disease," 99.

18 Lambert, *Babylonian Wisdom Literature*, 10.

19 R. Westbrook, "Punishments and Crimes," *ABD* 5:548.

These principles are reflected in numerous Mesopotamian religious documents, wherein the sufferer or a mediating diviner seeks some form of judicial relief from the gods' punishments. For instance, IVR², T. 10, lines 21, 31–32 state:

O my Lord, my wrongdoings are many, great are my sins . . .
 God in the rage of his heart has confronted me;
 The Goddess has become angry with me and made me ill.²⁰

In the Old Babylonian text, "Prayer to Anūna," the petitioner has suffered illness, headaches, and insomnia, and also feels rejected by his family and abandoned by his gods.²¹ He states through a priestly intercessor:

The weeper has been negligent, have pity on him! He has bowed down and has groaned when confronted with [his] guilt, He cries [to you] for sin committed. . . . "I have committed a [...] sin. . . . Inninna prosecuted me for my guilt, that I had not stood in awe of her praise."²²

Other examples abound.²³

20 Text translated by M. Dick, "Legal Metaphor in Job 31," *CBQ* 41 (1979): 39. See also S. Langdon, *Babylonian Penitential Psalms* (OCuT 6; Paris: Geuthner, 1927), 41.

21 See W. G. Lambert, "A Babylonian Prayer to Anūna," in *DUMU-E2-DUB-BA-A*, 321–29. All quotations from this text are taken from Lambert.

22 Lines 78–80, 85, 89. Occasionally, the petitioner saw the problem as stemming from the sin of a parent instead of him- or herself (see, e.g., W. G. Lambert, "DINGIR.ŠĀ.DIB.BA Incantations," *JNES* 33 [1974]: 270, no. 1, lines 115–18; and E. Reiner, *Šurpu—A Collection of Sumerian and Akkadian Incantations* [AfO Beiheft 11; Graz: Weidner, 1958], tablet 3, lines 176–83).

23 See, e.g., the "Prayers of the Lifting of the Hand" (King, *Babylonian Magic and Sorcery*, xxii–xxiii). J. L. Cooley says generally about extispicy rituals: "Such mantic acts were conceived in terms of a trial, with the inquirer as the defendant and the gods as the judges. Thus, the terminology used in the prayer [an OB Prayer to the Gods of the Night] is, to a certain degree, legal in nature (e.g., lines 6 and 8: *Šamaš Sîn Adad Ištar . . . ul idinnū dīnam ul iparrasū awātīm* "Shamash, Sîn, Adad and Ishtar . . . do not render judgment, they do not decide a case," and line 24, *kittam šuknān*, "[the gods will] place truth") ("An OB Prayer to the Gods of the Night," in *Reading Akkadian Prayers and Hymns*, 72). Cooley continues: "[T]he high gods, primarily Shamash and Adad, are ultimately responsible for the verdict rendered, the night gods nonetheless play a vital role for the inquirer who, by the very choice to engage in such a mantic act, has entered the courtroom of the most powerful judges in the cosmos. The inquirer desires a truthful and propitious outcome and for this they need all the help they can muster" ("OB Prayer to the Gods," 73; cf. 75–76).

The above two illustrations indicate that the sufferer could identify the wrongdoing that led to his or her punishment. He or she may already have been experiencing guilt over some indiscretion and had, therefore, connected the indiscretion to the punishment.²⁴ In such cases, the sufferer would simply approach a priest to request that he perform an expiation ritual in order to appease the anger of the gods and/or goddesses and to ask for a pardon of the divine conviction.²⁵ The Mesopotamian ritual incantation texts were used as part of these expiation rituals.²⁶

In other instances, however, the sufferer had no awareness of any wrongdoing that he or she might have committed when the suffering began, much like Job experiences in the Hebrew Bible. Such a sufferer would have to discover which sin or crime he or she had committed in order to seek relief from the summary judgment and its execution.²⁷ A medical practitioner, in some of these cases, could diagnose the illness and its cause by the sufferer's symptoms, thereby giving the sufferer relief.²⁸ For instance, the *Diagnostic Handbook* indicates that Šamaš, as the god of justice, could mete out illness for failing to pay one's tithe.²⁹ One's personal gods could bring illness upon one who had pondered untruths in one's heart.³⁰ Most importantly for the analysis of both Naboth's and Job's situations, blasphemous conduct could also bring on illness or mental impairment:

24 See, e.g., Cunningham, *Deliver Me*, 37.

25 See, e.g., King, *Babylonian Magic and Sorcery*, xxvii–xxix; and Lambert, “DINGIR,” 270.

26 For other discussions of the ritual incantation texts related to the divine law court, see most importantly Cunningham, *Deliver Me*; M. J. Geller, “The Šurpu Incantations and Lev. V.1–5,” *JSS* 25 (1980): 181–85; idem, “Incantations within Akkadian Medical Texts,” in *The Babylonian World* (ed. G. Leick; The Routledge Worlds; London: Routledge, 2007), 389–99; King, *Babylonian Magic and Sorcery*, xxvii–xxix; Lambert, “DINGIR,” 270; E. Reiner, “Lipšur Litanies,” *JNES* 15 (1956): 129–49; and idem, *Šurpu*.

27 See further Heeßel, “Diagnosis, Divination and Disease,” 97–116; Labat, *Traité akkadien de diagnostics*; and Scurlock and Andersen, *Diagnoses in Assyrian and Babylonian Medicine*. With regard to the ritual incantation texts' effort to uncover the cause of the harm, see Geller, “Šurpu Incantations,” 182; Reiner, *Šurpu*, 2–3; B. Wells, *The Law of Testimony in the Pentateuchal Codes* (BZABR 4; Wiesbaden: Harrassowitz, 2004), 91; and Westbrook, “Abuse of Power,” 27.

28 The Babylonian *Diagnostic Handbook* has been edited by N. B. Heeßel, *Babylonisch-assyrische Diagnostik*; and M. Stol, *Epilepsy in Babylonia* (Cuneiform Monographs 2; Groningen: STYX, 1993), 55–90. In this instance, see Heeßel, “Diagnosis, Divination and Disease,” 97–116; Labat, *Traité akkadien de diagnostics*; and Scurlock and Andersen, *Diagnoses*.

29 Scurlock and Andersen, *Diagnoses*, 431.

30 *Ibid.*, 439.

'Hand' of a god (is when) he curses the gods, speaks blasphemy, (and) strikes whatever he sees.³¹

Unfortunately for the sufferer, the diagnosis and cause was not always apparent from diagnostic manuals. A priest, in this situation, would have to inquire through divination as to the charges underlying the conviction and its attendant punishment as disclosed by the Šurpu Incantations.³² Usually, the priest would recite a lengthy list of possible offenses and ask the gods for a sign identifying the sin and/or confirming the petitioner's guilt. Once the sufferer knew the precise wrongdoing at issue, he or she could make confession and expiation, receive the pardon, and, hopefully, be healed. Tablets 5–6, lines 60–72 of the Šurpu Incantations, demonstrate that suffering is connected to sin:

Like this onion he (the priest) peels and throws into the fire, . . . (so) invocation, oath, retaliation, questioning, the pain of my hardship, sin, transgression, crime, error, the sickness that is in my body, my flesh, my veins, may be peeled off like this onion, may the fire consume it entirely today.³³

The petitioner in lines 195–99 then recites:

[T]oday may the angry heart of my god and goddess be pacified, and the oath removed from my body. Because you are the judge, I stand before you, and (because) you are beneficent, I turn constantly to you. Judge my cau[se], decide my [deci]sion!³⁴

31 Ibid.

32 Geller, "Šurpu Incantations," 182; and Reiner, *Šurpu*, 2–3.

33 All translations of the Šurpu Incantations are from Reiner, *Šurpu*.

34 The legal language is most prominent on tablet 2, lines 129–33, 186–92; tablet 3, lines 176–83; tablet 4, lines 11–17, 37–44, 67–108; tablets 5–6, lines 60–143; 195–99; and tablet 8, lines 41–47, 79–82. See also King, *Babylonian Magic and Sorcery*, 2, lines 16–19; *Babylonian Magic and Sorcery*, 4, lines 28–30; *Babylonian Magic and Sorcery*, 6, lines 73–75; *Babylonian Magic and Sorcery*, 12, lines 58–61; *Babylonian Magic and Sorcery*, 30, line 11. KAR, 184: "In the (legal) cause of the illness which has seized me, I am lying on my knees for judgment. Judge my cause, give a decision for me." B. Gemser, "The *riḫ*—or Controversy-Pattern in Hebrew Mentality," in *Wisdom in Israel and in the Ancient Near East Presented to Professor Harold Henry Rowley* (ed. M. Noth and D. W. Thomas; VTSup 3; Leiden: Brill, 1955), 127 n. 1). A. Falkenstein and W. Von Soden noted earlier that the petition is asking Šamaš to reconsider a prior judgment that had resulted in the sufferer's illness (*Sumerische und akkadische Hymnen und Gebete* [Zurich: Artemis, 1953], 323–25.

Interestingly, petitioners in Mesopotamian human lawsuits often asked the court “to judge my cause and to decide my decision,” similar to the language found in actual litigation documents.³⁵

The DINGIR.ŠĀ.DIB.BA Incantations (also known as the “Incantations for Appeasing an Angry God”) are much like the Šurpu Incantations.³⁶ In this set of incantations, however, the petitioner additionally asserts that he has acted in some righteous ways by listing a series of good deeds.³⁷ In so doing, he hopes to convince the petitioned god and goddess that he is a good man who has done many good acts and, therefore, deserves pardon for any possible indiscretion that he may have committed.³⁸

Sufferers ignorant of their crime often believed that their crime may have been committed inadvertently, unwittingly; otherwise, they would have recognized it immediately. We note this in a prayer that reads:

A terrible disease has weakened my entire body; a terrible illness is afflicting me. For a known and unknown sin—because I was disrespectful, because I sinned, was careless, committed misdeeds—I became fearful and afraid and I brought my life before your great divinity.³⁹

35 In S. Dalley, *A Catalogue of the Akkadian Cuneiform Tablets in the Collections of the Royal Scottish Museum, Edinburgh, with Copies of the Texts* (Royal Scottish Museum Art and Archaeology 2; Edinburgh: Royal Scottish Museum, 1979), no. 69, the plaintiff asks for judgment with the words *din dinu* and *purussā parāsu*, as are used in the ritual texts. In RA 12, 6–7, the plaintiff uses *din epēšu* to convey this same idea. A number of legal texts use the expression *purussa šakānu* to the same purpose. See also, e.g., AnOr 8, 56; AfO 44, 78 no. 6; AfO 44, 88 no. 19; TCL 13, 222; and TCL 13, 219 (= Nbn 720).

36 Lambert, “DINGIR,” 267.

37 Tablet 1, lines 80–84.

38 The language of litigation is also employed in *namburbi* rituals meant to forestall negative omens. In these situations, a diviner had brought a message of judgment and impending doom to an individual who had not yet suffered any calamity. In order to avoid such harm befalling the individual, he or she brought the individual before the divine court and pleaded innocence in the case. This is, in effect, a re-hearing of an issue that was decided on summary judgment in light of the testimony of the now present defendant (S. M. Maul, “How the Babylonians Protected Themselves against Calamities Announced by Omens,” in *Mesopotamian Magic: Textual, Historical, and Interpretive Perspectives*, 123–29).

39 Ebeling, *Akkadische Gebetsserie “Handerhebung,”* 8:7–12; text translated by Dick, “Legal Metaphor in Job 31,” 39.

The DINGIR.ŠĀ.DIB.BA Incantations, mentioned above, make reference to possible sins of the parent. There, of course, the petitioner would not have been an active participant in the wrongdoing and may not even have known about the wrong. The punishment is strictly vicarious.⁴⁰ The Šurpu Incantations also seek relief from any possible sins of the sufferer's parents, as well as his or her descendants, other relatives, as well as "the sin he knows and (the sin) he does not know."⁴¹ Unintentional sins are clearly within the scope of possible crimes for which one might be convicted in the divine courtroom and, therefore, suffer.

Moreover, a single god does not necessarily hear a petitioner's case alone; the divine assembly is often called to render judgment for the benefit of the sufferer or victim. A. Lenzi observes that diviners often called upon the divine assembly to judge and render their verdict via divination and quotes YOS 11, 22, lines 9–13:

Being (now) clean, to the assembly of the gods I shall draw near for judgment.
O Šamaš, lord of judgment! O Adad, lord of ritual acts and of divination!
In the ritual act I prepare, in the extispicy I perform put your truth!⁴²

Ancient Near Eastern wisdom literature reflects thinking identical to that of the ritual texts, including three theodicies often compared to the book of Job. "A Man and His God" involves a sufferer, who begs his god to relieve his suffering, which he believes has been caused by some unintentional sin he has committed:

40 On vicarious punishments, see R. Westbrook, "Introduction: The Character of Ancient Near Eastern Law," in *A History of Ancient Near Eastern Law* (ed. R. Westbrook; 2 vols.; HdO 72; Leiden: Brill, 2003), 1:36, 74, 79.

41 Reiner, *Šurpu*, tablet 3, lines 176–83.

42 A. Lenzi, *Secrecy and the Gods: Secret Knowledge in Ancient Mesopotamia and Biblical Israel* (SAAS 19; Helsinki: Neo-Assyrian Text Corpus Project, 2008), 55. See also H. Zimmern, *Beiträge zur Kenntnis der babylonischen Religion* (2 vols.; AB 12; Leipzig: Hinrichs, 1901) [hereinafter *BBR*], no. 95, lines 5'–8'; *BBR*, 89–90, lines 6'–8'; YOS 11, 23, lines 17–19. For more on the divine assembly in the greater ancient Near East, see, i.a., W. Hermann, "Die Frage nach Göttergruppen in der religiösen Vorstellungswelt der Kanaanäer," *UF* 14 (1982): 93–104; T. Jacobsen, "Primitive Democracy in Ancient Mesopotamia," *JNES* 2 (1943): 159–72; rep. in *Toward the Image of Tammuz and Other Essays on Mesopotamian History and Culture* (ed. W. L. Moran; HSS 21; Cambridge, Mass.: Harvard University Press, 1970), 157–70; and idem, *Treasures of Darkness*, 86–87. For bibliography regarding the Divine Council in the Hebrew Bible, as well as comparative studies, see n. 60, *infra*.

I do not know what sin I have committed.⁴³

In “The Just Sufferer” from Ugarit, the sufferer is frustrated because various oracular procedures have not resolved his illness nor disclosed how long he must continue to suffer:

My liver oracles remain obscure; they become like [...] The haruspex cannot resolve my case; the judge does not give any sign. . . . The scholars who deliberate on tablets concerning my case do not tell me the time limit of my sickness.⁴⁴

The petitioner in this case cannot get the attention of his divine judge by the normal means of divination in order to determine what he did to deserve his illness and resolve the difficulty. In the Babylonian “*Ludlul bēl nēmeqi*,” the sufferer states in his list of complaints:

I sought the favor of the *zaqīqu*-spirit, but he did not enlighten me; [a]nd the incantation priest with his ritual did not appease divine wrath against me.⁴⁵

This literature demonstrates unmistakably that it shares with the ritual texts the conception that some suffering arises because the gods have convicted one for an unknown sin in a divine trial.⁴⁶

A few of the ritual incantations texts specify that the sufferer believed that he or she could not get relief from the patron god or goddess who had executed punishment and, therefore, needed to appeal to a god higher in status within the pantheon for resolution of his or her case. In other words, the petitioner comprehended his or her request for relief as an appeal of an adverse decision in the

43 G. W. Lambert, “A Further Attempt at the Babylonian ‘Man and His God,’” in *Language, Literature, and History: Philological and Historical Studies Presented to Erica Reiner* (ed. F. Rochberg-Halton; AOS 67; New Haven: American Oriental Society, 1987), 191.

44 *Ugaritica* 5 162; text translated by M. Nissinen, with contributions by C. L. Seow and R. K. Ritner, *Prophets and Prophecy in the Ancient Near East* (ed. P. Machinist; SBLWAW 12; Atlanta: Society of Biblical Literature, 2003), 184.

45 Tablet 2, lines 8–9; translation from Lambert, *Babylonian Wisdom Literature*, 39.

46 See also, e.g., “The Tale of the Eloquent Peasant”: H. Goedicke, “Comments Concerning the ‘Story of the Eloquent Peasant,’” *zÄs* 125 (1998): 109–25; R. B. Parkinson, *The Tale of the Eloquent Peasant* (Oxford: Griffith Institute, Ashmolen Museum, 1991); and N. Shupak, “A New Source for the Study of the Judiciary and Law of Ancient Egypt: ‘The Tale of the Eloquent Peasant,’” *JNES* 51 (1992): 1–18.

court of lower deities. Some of the texts in the “Prayers of the Lifting of the Hand” indicate that a petitioner might list his or her patron deities, rather than the petitioned deity, as those whom he or she had angered, specifying that these deities had not given him or her relief. Consequently, the petitioner required the help of superior deities to act as judges of the sufferer’s case against his patron gods.⁴⁷

In the Hebrew Bible

Similar thinking can be seen within the Hebrew Bible. For instance, the curses of Deut 28:15–68 make clear that disobedience to YHWH’s laws can bring great suffering to individuals alone and to the whole community.⁴⁸ The sins as stated are: failing to “obey the voice of YHWH your God” (v. 15a; cf. vv. 45b α , 62b); failing to “be careful to do all his commandments and his statutes” (v. 15b; cf. vv. 45b β , 58); doing evil and forsaking YHWH (v. 20b); and failing to “serve YHWH your god with joyfulness and gladness of heart” (v. 47). The catastrophes may be global in scope, affecting those coming in and those going out (v. 19), in the city and the country (v. 16), one’s children (v. 18a α), livestock (v. 18b), and food (v. 17, 18a β). The calamities include:

- Illness, both physical and mental (vv. 22a, 27–29a α , 34–35, 59–61a)⁴⁹
- Grievous emotions (vv. 20a α , 65–67)
- Being repugnant or a laughingstock to others (vv. 25b β , 37a)
- Failure to prosper (v. 29a β)
- Victimization by crime (vv. 29b, 30a)
- Loss of house and property (v. 30c)
- Loss of livestock (v. 31)
- Pestilence (v. 21)
- Drought (vv. 22a β , 23–24)
- Crop disease and failure (22a, 38–40, 42)
- Infiltration and success of alien residents (vv. 43–44)

47 King, *Babylonian Magic and Sorcery*, xxiii, no. 4.

48 See P. Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible* (trans. M. J. Smith; JSOTSup 105. Sheffield: Sheffield Academic, 1994), 123–43, 155–61. J. L. Cooley notes generally in regard to religious language in the Hebrew Bible: “unsurprisingly, in . . . certain biblical pericopes the writers conceived of the invisible administration of divine-human relationships in mundane legal terms with which they were quite familiar” (“OB Prayer to the Gods,” 82).

49 Avalos argues that Deut 28:15, 22 make clear that “Yahweh used illness to enforce covenants made with humans. Such covenants promised health and longevity to those who followed Yahweh’s stipulations, but illness and death to those who did not (*Illness and Health Care*, 242). He further asserts that YHWH repeatedly “employs illnesses to punish evildoers in DtrH and in the Chronicler . . . and to test Job” (*ibid.*, 244).

War and defeat (vv. 25, 49–52)
 Selfishness and greed (vv. 54, 56)
 Cannibalism (vv. 53, 55, 57)
 Colonization (vv. 33, 36a, 48)
 Captivity of children (vv. 32, 41)
 Exile (vv. 37b, 63b–64b)
 Forced idolatry (vv. 36b, 64b)
 Slavery (v. 68)
 Death (vv. 20, 22b β , 24b β , 45a, 61b)
 Death without burial (v. 26)
 General population loss (v. 62a)

J. Wilkinson states: “While the Old Testament is quite clear that all healing comes from God, it is equally clear that God may send disease, inflicting injury on his people for their disobedience . . . Obedience to God’s law is the best form of preventative medicine.”⁵⁰ He extends this idea to include passages from Exodus, Leviticus, Psalms, Jeremiah, Ezekiel, and Hosea.⁵¹ This principle not only applies to illness but also to many other calamities as observed in Deuteronomy 28; and it is not only God’s people but also foreign nations that may suffer for their sins.⁵² This notion also underlies sections of Lamentations, Daniel, Ezra-Nehemiah, and Chronicles. There is no end to YHWH’s judgments and the suffering that he can bring.

H. Avalos addresses the remedy of such illness in ancient Israel:

One of the effects was that patients assumed that transgressions or a poor relationship with Yahweh was the cause of their illness. Under this conceptual system, searching for reconciliation with Yahweh became part of the therapeutic process itself. The petitions and thanksgiving rituals related to illness were permeated by the patient’s search for reconciliation with the deity. The search also included a concern for “hidden” sins that might have caused the illness.⁵³

50 J. Wilkinson, *The Bible and Healing: A Medical and Theological Commentary* (Grand Rapids: Eerdmans, 1998), 14–15.

51 Ibid., citing Exod 15:26; 23:20–26; Lev 26:14–16, 23–26; Ps 38:3–8; Prov 3:7–8; among others.

52 See, i.a., Exod 6:6; 7:4; 12:12; Isa 34:1–17; 43:9–13; Amos 1:3–2:16; and Zeph 2:1–3:8. A helpful comparative analysis of the legal language of Isa 43:9–13 can be found in S. E. Holtz, “A Comparative Note on the Demand for Witnesses in Isaiah 43:9,” *JBL* 129 (2010): 457–61.

53 Avalos, *Illness and Health Care*, 244–45. I reject K. Koch’s idea that YHWH has limited involvement in retributive justice (“Gibt es ein Vergeltungsdogma im Alten Testament?” *ZTK* 52 [1955]: 1–42; later trans. T. H. Trapp and partially repr. as “Is there a Doctrine of

The solution to such difficulties is also similar to that in Mesopotamia. Both M. J. Geller and B. Wells note links between the Mesopotamian ritual incantation texts and Leviticus 4–5.⁵⁴ W. G. E. Watson observes the relationship between the incantation texts and the metaphors of the book of Hosea,⁵⁵ and K. J. Cathcart notices it in Micah 5.⁵⁶ YHWH's lawsuits have been the subject of many scholarly works. Others have discussed at length the import of the ritual incantations to the book of Job,⁵⁷ as have I.⁵⁸ It is no accident that the book of Job is replete with legal metaphors: Job and his friends embrace whole-heartedly the outlook expressed in the ritual texts and wisdom literature

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- Retribution in the Old Testament?" in *Theodicy in the Old Testament* [ed. J. L. Crenshaw; London: SPCK; Philadelphia: Fortress, 1983], 57–87). As Heeßel states above (see n. 17, *supra*), humans do create a negative situation to which the gods must respond. Thus, Koch's notion that humans always create "eine schicksalwirkende Tatsphäre" ("a destiny-producing sphere of action") ("Vergeltungsdogma," 9, 15, 18, 32) that, when negative, brings adverse consequences is not entirely wrong. Nonetheless, Koch goes on to deny the legal aspect of divine retributive justice (*ibid.*, 58). See further P. T. H. Hatton, *Contradictions in the Book of Proverbs: The Deep Waters of Counsel* (SOTS; Farnham, UK: Ashgate, 2008), 30–32; and J. S. Kaminsky, *Corporate Responsibility in the Hebrew Bible* (JSOTSup 196; Sheffield: Sheffield Academic Press, 1995), 22–26. His "destiny-producing sphere of action" becomes, then, a force that is more karmic in nature, which is highly problematic when understood within the worldview of the Hebrew Bible.
- 54 Geller, "Šurpu Incantations," 181–92; Wells, *Law of Testimony*, 68–69. Their analyses of precisely how the Šurpu Incantations inform the Leviticus passages differ. I am more closely aligned with Wells' analysis.
- 55 W. G. E. Watson, "Reflexes of Akkadian Incantations in Hosea," *VT* 34 (1984): 242–47.
- 56 K. J. Cathcart, "Micah 5, 4–5 and Semitic Incantations," *Bib* 59 (1978): 38–48.
- 57 M. B. Dick ("Legal Metaphor in Job 31," 39); Gemser ("*Rîb*-Pattern," 127 n. 1); L. J. Sheldon ("The Book of Job as Hebrew Theodicy: An Ancient Near Eastern Intertextual Dispute Between Cosmology and Law" [Ph.D. diss., University of California Berkeley and Graduate Theological Union Joint Degree Program in Near Eastern Religion, 2002], 84); D. T. Stewart ("A Comparison of the Legal Tradition of Job's Oath of Clearance and Ancient Near Eastern Legal Codes" [paper presented at the annual meeting of the Society of Biblical Literature, San Francisco, Calif., 23 November 1992], 2); and R. Westbrook ("*Lex Talionis* and Exodus 21, 22–25," *RB* 93 [1986]: 59 n. 33), all maintain that the author of Job incorporated the worldview reflected in the Mesopotamian ritual incantations, hymns, prayers, and theodicies in shaping the book. See also Avalos, *Illness and Health Care*, 128–39; G. F. Hasel, "Health and Healing in the Old Testament," *AUSS* 21 (1983): 198; H. Vorländer, *Mein Gott: Die Vorstellungen vom persönlichen Gott im Alten Orient und im Alten Testament* (AOAT 23; Neukirchen-Vluyn: Neukirchener Verlag, 1975), 99; and van der Toorn, *Sin and Sanction*, 72–80. Cf. Geller, "An Incantation against Curses," 127–40.
- 58 Magdalene, *On the Scales*, 13–25, 109, 116, 134, 179, 182, 183–190, 199–200, 208; see also eadem, "ANE Legal Origins," 38–55.

in the ancient Near East in connecting trial law to theodicy. Although Job and his friends disagree as to who is ultimately responsible for Job's sufferings (God or Job), to the minds of all the men of Job, the sufferings are definite manifestations of God's law. This is the very reason that the book of Job contains so many metaphors based on trial law. Moreover, God's judgment is often summary. B. A. Levine, in discussing the cultic understanding of, and responses to, divine wrath, has acknowledged that YHWH's legal decisions are not precisely like a court that considers all the evidence, but instead YHWH issues judgment directly and immediately:

The death of the offender by God's hand, as threatened in cultic regulations, is not like a capital sentence imposed by a court on the basis of evidence, but is conceived as a direct, immediate judgment executed by the divine judge.⁵⁹

What he describes, from a legal perspective, is a summary decision or judgment similar to what is articulated in the ritual incantation texts.

YHWH, furthermore, does not solely dispense such justice; the Divine Council may also be involved in a manner similar to the gods in the Mesopotamian divination texts.⁶⁰ One of the Council's chief responsibilities

59 B. A. Levine, *In the Presence of the Lord: A Study of Cult and Some Cultic Terms in Ancient Israel* (SJLA 5; Leiden: Brill, 1974), 72.

60 The Divine Council is identified variously as: *council* [סֹד] (Jer 23:22); *council of Eloah* (Job 15:8; although this verse is ambiguous and may well mean *counsel of Eloah*); *the council of the holy ones* (Ps 89:8); *the council of YHWH* (Jer. 23:18; cf. v. 22); *assembly* (מוֹעֵד) (Isa 14:13); *the assembly* (עֲדָת) of El (Ps 82:1); and the *assembly* (קֹהֵל) of the *holy ones* (Ps 89:6, 8); cf. 1 Kgs 22:19; Isa 6:1; Zech 3:1–5; and Dan 7:9–10, where the council meets but remains unnamed as a council or assembly. Questions exist as to whether or not certain divine beings are members of the Council. My position is that the Satan is a member of the Divine Council (reading with D. J. A. Clines, *Job 1–20* [WBC 17; Dallas: Word, 1989], 19; and against S. Terrien and P. Schere, “The Book of Job: Introduction and Exegesis,” *IB*, 912; and F. I. Andersen, *Job: An Introduction and Commentary* [TOTC; Downers Grove, Ill.: InterVarsity, 1976], 82). So too is the רוּחַ שֶׁקֶר “spirit of falsehood” in 1 Kgs 22:22 (E. J. Hamori, “The Spirit of Falsehood,” *CBQ* 72 [2010]: 18–19). For more on the concept of the divine council and the many functions it served in the ancient Near East, see J. Ackerman, “An Exegetical Study of Psalm 82” (Th.D. diss., Harvard University, 1966); D. E. Bokovoy “עֲקֵב” וְהַעֲדָה בְּבֵית יְהוָה: Invoking the Council as Witness in Amos 3:13,” *JBL* 127 (2008): 37–57; F. M. Cross, “The Council of Yahweh in Second Isaiah,” *JNES* 12 (1953): 274–77; K. M. Lopez, “The Divine Council Scene in Second Temple Literature” (Ph.D. diss., Emory University, 2002); P. D. Miller, Jr., “Divine Council and the Prophetic Call to War,” *VT* 18 (1968): 100–7; idem, “Cosmology and the World Order in the Old

was to judge matters both human and divine.⁶¹ For example, Dan 7:9–10 manifests the Council's judicial administration over earth; both Psalm 82 and Job 1–2, its judicial administration over heaven; and both Zech 3:1–5 and Job 1–2, its judicial involvement in human affairs.⁶²

Also consistent with the Mesopotamian ritual incantations, some biblical authors believed that the sufferer could influence YHWH's or the Council's decisions through prayer and, at times, even effect a reconsideration of prior decisions in line with the ritual incantations.⁶³ For instance, a number of psalms (e.g., 3, 7, 27, 57, 64, 69, 109) are written from the viewpoint of one appealing a summary conviction and requesting that the case be reheard and a new verdict issued.⁶⁴ These prayers, like others in the ancient Near East, resultantly employ terminology with dual religious and legal significance, such as: "call, summon" (קרא), "cry, plead" (שוע), "hear" (שמע), "listen" (האזן), "answer"

Testament: The Divine Council as Cosmic-Political Symbol," *Horizons in Biblical Theology* 9 (1987): 58–78; E. T. Mullen, "Divine Assembly," *ABD*, 2: 214–17; idem, *The Divine Council in Canaanite and Early Hebrew Literature* (HSM 24; Chico, Calif.: Scholars Press, 1980); M. E. Polley, "Hebrew Prophecy Within the Council of Yahweh, Examined in Its Ancient Near Eastern Setting: The Contextual Approach," in *Scripture in Context: Essays on the Comparative Method* (ed. C. D. Evans, W. W. Hallo, and J. B. White; Pittsburgh: Pickwick, 1980), 141–56; H. W. Robinson, "The Council of Yahweh," *JTS* 45 (1944): 151–57; C. R. Seitz, "The Divine Council: Temporal Transition and New Prophecy in the Book of Isaiah," *JBL* 109 (1990): 229–47; and G. E. Wright, *The Old Testament Against its Environment* (SBT 2; London: SCM, 1968), 30–41.

- 61 In regard to the greater ancient Near East, A. Lenzi acknowledges: "The divine assembly (*puḫru* / *ukkin*) is a well known institution among students of Mesopotamian mythology. The divine assembly is the place where the gods meet to make their decision. 'Matters with which the assembly dealt,' summarizes Jacobsen, 'were basically of two kinds: it served as a court of law judging and passing sentence on wrongdoers, human or divine, and it was the authority that elected and deposed officers such as kings, human and divine' (*Secrecy and the Gods*, 50; quoting Jacobsen, *Treasures of Darkness*, 86–87). For the legal tasks of the Divine Council in the Hebrew Bible, see Ackerman, "Psalm 82," 176–272, 299–306; and Y. Zakovitch, "Psalm 82 and Biblical Exegesis," in *Sefer Moshe: The Moshe Weinfield Jubilee Volume* (ed. C. Cohen, A. Hurvitz, and S. M. Paul; Winona Lake, Ind.: Eisenbrauns, 2004), 215–17.
- 62 Cf. Ackerman, "Psalm 82," 207.
- 63 F. R. Magdalene and B. Wells, "Law in the Writings," in *The Oxford Encyclopedia of Biblical Law* (ed. B. Strawn; New York and Oxford: Oxford University Press, forthcoming).
- 64 G. R. Czander, " 'You Are My Witnesses': A Theological Approach to the Laws of Testimony" (Ph.D. diss., Fordham University, 2009), 126–34. See also Magdalene and Wells, "Law in the Writings."

(ענה), “redeem” (גאל), “prayer, supplication, petition” (תפלה), “complaint” (שיח), and numerous other terms.⁶⁵

An examination of Lamentations is especially helpful in this regard because legal language is evident throughout the poems and, in some instances, highly reminiscent of the language of the Mesopotamian prayers, hymns, and ritual incantations. The authors present themselves as arguing a case before YHWH.⁶⁶ The language of litigation and appeal comes through especially strongly in Lamentations 3. The poet refers to his “crying” (זעק) and “pleading” (שוע) to YHWH but expresses concern that his “petition/prayer” (תפלה) is being ignored (Lam 3:8; cf. 3:44). He describes his plea as a “lawsuit” (משפט) in 3:35; ריב in 3:36) and employs language reminiscent of a legal appeal: “You have litigated (ריב) the litigations of my life (ריבי נפשי) . . . May you now judge my judgment (שפטה משפטי)” (Lam 3:58–59). He has “summoned” (קרא; 3:55, 57) YHWH to “draw nigh” (קרב; 3:57) so that his “pleading” and “cry” (שוע and רוח; 3:56) will not go unheard (שמע; 3:56), in the sense that a judge might refuse to hear a legal case.⁶⁷ The poet believes that the Divine Council has already issued a verdict and imposed a sentence, and so he beseeches YHWH to reconsider the matter and reduce the punishment.

To conclude, the fundamental worldview of the ancient Near East included the notion that suffering is often the result of a legal conviction by the gods for a sin committed, whether or not that sin was known to the sufferer. The defendant was typically tried *in absentia* and the conviction was often summary. Because of these factors and the mercy of the gods and goddesses, the sufferer could petition the court for a post-penalty accounting of the crime, offer proof of innocence or confession, and request pardon in the case where confession

65 S. E. Holtz, “Praying as a Plaintiff,” *VT* 61 (2011): 258–79; and Magdalene, *On the Scales*.

66 F. W. Dobbs-Allsopp demonstrates that Lamentations draws upon the Mesopotamian city-lament genre (*Lamentations* [Interpretation; Louisville: John Knox Press, 2002], 7–9). The five classic examples, “Lamentation over the Destruction of Ur,” “Lamentation over the Destruction of Sumer and Ur,” “Nippur Lament,” “Eridu Lament,” and “Uruk Lament,” all “depict the destruction of particular cities and their most important shrines. The destruction, brought about as a result of the capricious decision of the divine assembly, and the subsequent abandonment of the city by its chief gods, is typically carried out by the chief god Enlil through the agency of an attacking enemy” (ibid., 7). Lamentations does not specifically mention, however, the divine council, placing responsibility for the destruction on YHWH, the divine warrior (ibid., 9). See also idem, *Weep, O Daughter of Zion: A Study of the City-Lament Genre in the Hebrew Bible* (BibOr 44; Rome: Pontifical Biblical Institute, 1993), 28, 95–96.

67 Holtz, “Praying,” 258–79. See also Magdalene and Wells, “Law in the Writings.”

was appropriate. It was believed that such acts would bring both legal and physical relief to the sufferer. Human wrongdoing, suffering, and divine law are deeply connected in the theodicy of the ancient world, including Israel.

Abuse of Authority

All legitimate legal systems have mechanisms to deal with the challenge that abuse of power or authority poses.⁶⁸ Some people will seek to stretch the limits of their authority to the point of abuse. In certain cases, the action may fall within the strict letter of the law, but the result will, nonetheless, be unreasonable or even unconscionable. A legal claim of abuse of authority stands when those with superior economic, political, or legal power use their influence to an unfair advantage and cause harm to a less well-positioned individual.

The claim of abuse of judicial authority is especially important in keeping those in charge of the legal system in check. There is a critical need in every society to have some mechanism for curbing instances of judicial abuse and compensating its victims.⁶⁹ P. M. Wald maintains that this is true because the law is the primary instrument used to control street violence and is itself violent.⁷⁰ Consequently, judges are the gatekeepers of society's violence.⁷¹ Judges, then, can use their control of violence to injure people in ways not culturally sanctioned. Where the judicial system fails, so fails fair government. As a result, a widespread problem of abuse of judicial authority is devastating to

68 Westbrook, "Abuse of Power," 9–38, esp. 9–11. See also idem, "Social Justice in the Ancient Near East," in *Social Justice in the Ancient World* (ed. K. Irani and M. Silver; Westport, Conn.: Greenwood, 1995), 149–63; idem, "Punishments and Crimes," 555; and Bovati, *Re-Establishing Justice*, 306–28. I made the arguments regarding abuse of authority found in this section of the article first in Magdalene, *On the Scales*, 145–55.

69 P. M. Wald, "Violence under the Law: A Judge's Perspective," in *Law's Violence* (ed. A. Sarat and T. R. Kearns; Ann Arbor: University of Michigan Press, 1992), 77–103.

70 Ibid.

71 Wald states: "[A] society is defined by its ability to enforce communal decisions—by force, if necessary. And the judge in our society is often the one who decides when, how, and whether to apply that communal force in the name of the law, when to let violence out into the open, when to suppress it, against whom it may be directed, where and how it can take place. Judges live in a paradoxical proximity to violence. The courts are generally regarded as the alternative to fighting in the streets, yet, inherent in many of our decisions is the probability, even the certainty, of violence; we affirmatively sanction yet try to control and channel that violence to attain the law's end" (ibid., 77–78).

a culture. A legal claim based on abuse of judicial authority is the primary tool used in both deterring and correcting inappropriate judicial violence.

In Mesopotamia

In the ancient Near East, abuse of authority was also recognized as a problem for the same reason. Moreover, officials held, throughout most of the ancient Near East, both administrative and legal functions, which allowed some duly authorized officials to act, in some circumstances, in a quasi-judicial function with respect to their subordinates.⁷² This overlap permitted the officials to decide legal matters that affected their subordinates without instituting formal legal proceedings.⁷³ This, too, gave rise to additional possible abuses that more modern and separate judicial branches would not experience. For both these reasons, then, claims could be brought. These claims stood where a petitioner had been subject to some sort of unfair financial, administrative, or legal maneuver. The damage may have included loss of property, the deprivation of a legal right or economic benefit owed to the claimant, or other type of injury to his or her welfare.⁷⁴ One could complain about an incident of abuse of power through regular legal channels or by extra-judicial petition, but the latter course was more common. The king also heard such cases by petition.⁷⁵

This protocol was imperative in cases where the petitioner believed the power of his opponent would render any lawsuit on the matter an exercise in futility.⁷⁶ Because parties could also be judges in the ancient Near East

72 Magdalene, *On the Scales*, 56–57 n. 4; and Westbrook, “Social Justice,” 152. During the Neo-Babylonian and Achaemenid empires, however, a professional judiciary was beginning to develop (see C. Wunsch, “Die Richter des Nabonid,” in *Assyriologica et Semitica: Festschrift für Joachim Oelsner anlässlich seines 65. Geburtstages am 18. Februar 1997* [ed. J. Marzahn and H. Neumann; AOAT 252; Münster: Ugarit-Verlag, 2000], 557–97; eadem, “Und die Richter berieten . . . Streitfälle in Babylon aus der Zeit Neriglissars und Nabonids,” in *AfO* 44/45 [1997–1998]: 59–100; and chapters 3 and 7 in the forthcoming F. R. Magdalene, B. Wells, and C. Wunsch *Fault, Responsibility, and Administrative Law in Late Babylonian Legal Documents* [AOAT; Münster: Ugarit-Verlag, 2014]).

73 Westbrook, “Social Justice,” 152.

74 On this last category of harm, see, e.g., Laws of Hammurabi §163, where a soldier’s superior may not give him out for hire.

75 Possible Neo-Assyrian abuse-of-authority petitions include the letter discussed in S. Parpola, *Letters from Assyrian and Babylonian Scholars* (State Archives of Assyria 10; Helsinki: Helsinki University Press, 1993), 125–26 (no. 163) and 126–27 (no. 164). A similar kind of petition appears to have been brought before the crown prince in the letter discussed in *ibid.*, 128 (no. 168).

76 Westbrook, “Abuse of Power,” 11–14.

(particularly where the harm was only economic and the party-judge played an important administrative function in the government), a superior might hear a matter in which he had a stake.⁷⁷ The best course of action, as a result, in the case where a superior abused his authority was to petition the king,⁷⁸ although lesser officials also had the ability to handle abuse of power claims.⁷⁹ The presiding official, whether the king or one of his subordinates, could have assessed a number of penalties, including capital punishment, where an individual was found guilty of such abuse.⁸⁰

Even where the official was serving in an independent judicial role, concern about judicial abuse was manifest, as noted in Laws of Hammurabi §5, which deals with one manifestation of this situation:⁸¹

If a judge renders a judgment, gives a verdict, or deposits a sealed opinion, after which he reverses his judgment, they shall charge and convict that judge of having reversed the judgment which he rendered and he shall give twelve-fold the claim of that judgment; moreover, they shall unseat him from his judgeship in the assembly, and he shall never again sit in judgment with the judges.⁸²

⁷⁷ Magdalene, *On the Scales*, 65, 165.

⁷⁸ Westbrook explains: “The Mesopotamian sources leave no doubt as to who is the guardian against abuse of power, whether derived from economic strength or legal authority. The king acts both as the fountainhead of law in the strict sense and as the guarantor of social justice” (Westbrook, “Abuse of Power,” 11; cf. 13). See also Westbrook, “Social Justice,” 152.

⁷⁹ Laws of Hammurabi §34; cited by Westbrook, “Social Justice,” 12. Westbrook also notes that there seems to have been, in the Hittite Empire, an itinerant ombudsman to handle such claims (“Punishments and Crimes,” 5: 555, citing the Hittite “Instructions to the Border Guard Commander,” translated by A. Goetze [*ANET*, 211]).

⁸⁰ Laws of Hammurabi §34. See also Westbrook, “Punishments and Crimes,” 5: 555.

⁸¹ My view of the nature of the so-called law codes of the ancient Near East follows that of Westbrook. I believe that they are in the nature of legal treatises that are used in the education of judges in the ancient Near East. They reflect, for the most part, law as practiced, as well as, to a lesser degree, hypothetical situations that seem unlikely to have occurred in fact. For further see F. R. Magdalene, “Introduction: Law as Method,” in R. Westbrook, *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook, 1983–2008*, vol. 2: *Cuneiform and Biblical Sources* (ed. B. Wells and F. R. Magdalene; Winona Lake, Ind.: Eisenbrauns, 2009), vi–xx; and eadem, “Legal Science Then and Now: Theory and Method in the Work of Raymond Westbrook,” *Maarav* 18 (2011): 17–53.

⁸² Martha T. Roth’s translation (*Law Collections from Mesopotamia and Asia Minor* [2d ed.; SBLWAW; Atlanta: Scholars Press, 1997], 82. Cf. Laws of Hammurabi § 113.

"Nebuchadnezzar King of Justice," a Neo-Babylonian literary text, also examines potential governmental abuse of authority, including judicial abuse.⁸³ The document addresses the ability of the strong to oppress those who are incapable of obtaining legal redress, a failure of government representatives to assist the widow or the person with a disability before the court, the failure of judges to give rightful legal relief to the deserving, and judges' acceptance of bribes. While this latter document appears to be replete with hyperbole and the documents of practice do not reflect that these abuses were especially problematic during the reign of any Neo-Babylonian king, the text does reflect legal traditions, procedures, and attitudes of ancient origin.

An Old Babylonian extra-judicial petition for abuse of legal process makes this clear.⁸⁴ In this instance, an official had not followed appropriate legal procedure. The suit involved the question of whether or not the petitioner's contract of purchase been invalidated by a *mīšarum* decree.⁸⁵ Representatives of

83 For more on this text, see B. F. Foster, *Before the Muses: An Anthology of Akkadian Literature* (2 vols.; 2d ed.; Bethesda, Md.: CDL, 1996), 748–52 no. 6.13; T. Frymer-Kensky, "The Judicial Ordeal in the Ancient Near East" (2 vols.; Ph.D. diss., Yale University, 1977), 462–73; and W. G. Lambert, "Nebuchadnezzar King of Justice," *Iraq* 27 (1965): 1–11. The text is also discussed in P.-A. Beaulieu, "A Note on the River Ordeal in the Literary Text 'Nebuchadnezzar King of Justice,'" *NABU* (1992/1993): 58–60; J. Bottéro, "L'ordalie en Mésopotamie ancienne," *ASNSP* 11 (1981): 1005–67; and M. A. Dandamaev, *Slavery in Babylonia: From Nabopolassar to Alexander the Great (626–331 BC)* (ed. V. A. Powell and D. B. Weisberg; trans. V. A. Powell; De Kalb, Ill.: Northern Illinois Press, 1984), 24.

84 Published by J. J. Finkelstein, "Some New *Misharum* Material and its Implications," in *Studies in Honor of Benno Landsberger on His Seventy-Fifth Birthday* (ed. H. G. Güterbock and T. Jacobsen; AS 16; Chicago: University of Chicago Press, 1965), 233–51; discussed, making some modifications to Finkelstein's translation, by Westbrook, "Abuse of Power," 13–14.

85 A *mīšarum* decree, as used in this context, is an edict issued by a king for the purpose of economic reform. It might cancel valid debt agreements, release individuals from debt-slavery, and reverse forced sales of family domiciles, and relieve other types of economic hardships that were legitimately created before the decree. They were often issued by a king at the commencement of his reign, to commemorate an important occasion, or in response to various economic, political, or religious pressures. See M. Lambert, "Les 'réformes' d'Urukagina," *RA* 50 (1956): 182–233; and M. Weinfeld, "Justice and Righteousness" in Israel Against the Background of 'Social Reforms' in the Ancient Near East," in *Mesopotamien und seine Nachbarn: Politische und kulturelle Wechselbeziehungen im Alten Vorderasien vom 4. bis 1. Jahrtausend v. Chr.* (ed. H.-J. Nissen and J. Renger; 2 vols.; CRRA 25; Berlin: Dietrich Reimer, 1982), 2:158–60; cf. B. F. Foster, "Social Reform in Ancient Mesopotamia," in *Social Justice in the Ancient World*, 165–75.

the assembly, which was the lower tribunal, determined that the contract was good and sent the man to a higher official for further action. The official, without a hearing, disagreed with the lower court and broke the tablet outside of the petitioner's presence. The petitioner returned to the lower court with the tablet shards to complain of his treatment, whereupon the assembly said that they were powerless against the higher official. The victim then petitioned the king for relief. The petition was not based on a claim that the official lacked the authority to overturn the decision of the lower court; rather, it was based on an abuse-of-authority claim in that he overruled the lower court without giving the petitioner due process of law.

A Neo-Babylonian letter might also involve an abuse-of-authority claim brought before the king.⁸⁶ There, a representative of the king contacted the *šatammu*-officer, at the king's behest, about having the overseer of the stonemasons arrested because his subordinates complained that the overseer had not paid them. The letter reflects that the king also ordered that the stonemasons be paid. Apparently, the petitioners were denied an economic benefit that was due them by a superior and petitioned the king, who gave them redress. The arrest indicates that the overseer is also criminally responsible for theft of the wages from, in all likelihood, the king himself.

Royal abuse of authority was also addressed and was understood to be highly problematic. A Neo-Assyrian literary document, "Advice to a Prince," lists the types of royal abuses that were considered particularly egregious.⁸⁷ The ruler is warned against failing to heed justice, improperly convicting a citizen, taking bribes, treating a lawsuit frivolously, improperly imposing fines

86 *Cuneiform Texts from Babylonian Tablets 22*, no. 160. For other letters that might deal with abuse of authority, see, e.g., *AbB*, 1 34; *AbB*, 2 6; and *AbB*, 2 74.

87 Lambert, *Babylonian Wisdom Literature*, 110–15. For a history of the copies, transliterations, translations, and analyses of the Nineveh exemplar, see I. M. Diakonoff, "A Babylonian Political Pamphlet from about 700 BC," in *Studies in Honor of Benno Landsberger on His Seventy-Fifth Birthday* (ed. H. G. Güterbock and T. Jacobsen; AS 16; Chicago: University of Chicago Press, 1965), 343 nn. 1–2. A very early Neo-Babylonian copy of this document was discovered in the Neo-Babylonian Governor's Archive from Nippur (Nippur 4 128). Cole copies, transliterates, and translates this copy, but M. Civil provided a prior transliteration in an appendix to Reiner, "The Babylonian Fürstenspiegel in Practice," in *The Neo-Babylonian Elders, Society and Languages of the Ancient Near East, Studies in Honour of I. M. Diakonoff* (ed. M. A. Dandamaev et al.; Warminster: Aris and Phillips, 1982), 320–26, appendix at pp. 324–26. An early Neo-Babylonian letter to King Esarhaddon seems to quote from "Advice to a Prince" with some slight deviation from the original. See Reiner, "Babylonian Fürstenspiegel," 320–23.

or imprisonment of his citizens, and taking silver for his own coffers, among other offenses. Furthermore, if his advisors should receive bribes to swear false accusations, they would also suffer severe consequences.

In the Hebrew Bible and Ancient Israel

Ancient Israel, like its neighbors, made multiple pronouncements concerning the duties required of social justice. When individuals abused their power or authority, a claim against such stood at law, and legal remedies were available. As in the rest of the ancient Near East, the king was responsible for maintaining social justice and a fair legal system. Psalm 101, one of the royal psalms, is just one indicator of the king's role in assuring justice reigned:

I will sing of loyalty and of justice;
to you, O YHWH, I will sing.
I will study the way that is blameless.
When shall I attain it?
I will walk with integrity of heart
within my house;
I will not set before my eyes
anything that is base.
I hate the work of those who fall away;
it shall not cling to me.
Perverseness of heart shall be far from me;
I will know nothing of evil.
One who secretly slanders a neighbor
I will destroy.
A haughty look and an arrogant heart
I will not tolerate.
I will look with favor on the faithful in the land,
so that they may live with me;
whoever walks in the way that is blameless
shall minister to me.
No one who practices deceit
shall remain in my house;
no one who utters lies
shall continue in my presence.
Morning by morning I will destroy
all the wicked in the land,
cutting off all evildoers
from the city of YHWH.

The king, herein, is admonished to do justice and take action against the wicked.⁸⁸ As the primary agent of divine social justice, the king was the usual recipient of abuse-of-authority petitions,⁸⁹ as in the greater ancient Near East, although it appears that others within the administration could hear these claims.⁹⁰ The penalty for abuse-of-authority claims was typically within the discretion of the official hearing the claim and could have involved financial compensation⁹¹ and/or capital punishment.⁹²

Whenever this system of earthly justice failed, Israel believed that YHWH would rectify the situation and punish the offender, whoever it might be: God could initiate his own lawsuits (רִיב) in the divine courtroom against offending persons, institutions, and nations.⁹³ The prophetic view of God arises out of

88 F. H. A. Kemik, "Code of Conduct for a King: Psalm 101," *JBL* 95 (1976): 391–403.

89 Westbrook, "Abuse of Power," 36, citing Jer 21:12; 22:3; and Ps 72:4. For a brief discussion of the king's general judicial powers, see Westbrook, "Biblical Law," 8. Weinfeld observes that the king in Israel was expected to uphold the concept of social justice just as kings were in the greater ancient Near East ("Justice and Righteousness," 492; see Prov 21:3; cf. Isa 16:5). In Hebrew, the hendiadys meaning *social justice* is צְדָקָה וּמִשְׁפָּט (Weinfeld, "Justice and Righteousness," 492; see Gen 18:19; Ps 33:5; Prov 21:5).

90 This is discernable from the *Mešad Ḥashavyahu* ostrakon, a Hebrew extra-judicial petition concerning abuse of authority that I will discuss at length below. For literature regarding this ostrakon, see, i.a., F. W. Dobbs-Allsopp, "The Genre of the *Mešad Ḥashavyahu* Ostrakon," *BASOR* 295 (1994): 49–55; idem, J. J. M. Roberts, C. L. Seow, and R. E. Whitaker, *Hebrew Inscriptions: Texts from the Biblical Period of the Monarchy with Concordance* (New Haven: Yale University Press, 2004), 358–70; E. M. Meyers, *The Oxford Encyclopedia of Archaeology in the Near East* (5 vols.; Oxford and New York: Oxford University Press, 1997), 3: 475; S. B. Parker, *Stories in Scripture and Inscriptions: Comparative Studies on Narratives in Northwest Semitic Inscriptions and the Hebrew Bible* (Oxford and New York: Oxford University Press, 1997), 15–18; and C. A. Rollston, "Are They Genuine? Laboratory Analysis of the Moussaïeff Ostraca using the Scanning Electron Microscope (SEM) with an Energy Dispersive X-Ray Microanalyzer (EDS)," *NEA* 61 (1998): 8–9. An extensive bibliography of materials before 1978 may be found in R. W. Suder, *Hebrew Inscriptions: A Classified Bibliography* (Selinsgrove, Penn.: Susquehanna University Press, 1984), 62–63. Additional later bibliography is available in Dobbs-Allsopp et al., *Hebrew Inscriptions*, 358–70.

91 Westbrook states: "If the culprit voluntarily confessed, he must restore the property plus a fifth and bring a guilt-offering for sacrifice (Lev 5:21–26)" ("Punishments and Crimes," 5:555). Westbrook reads a confession into this passage; it makes no mention of such, as we find in Lev 5:1–4 and Num 5:6–7. He believes this must be implied because the compensation seems much too low for the offenses listed (*Studies*, 15–16). The penalty, therefore, must be mitigated by confession. I believe that the expiation may be the actual mitigating factor in this pericope.

92 See Westbrook, "Punishments and Crimes," 5:555, discussing 2 Sam 12:1–6.

93 There are numerous important writings on God's legal enforcement powers and his ability to bring lawsuits as a part of those powers. See, e.g., R. V. Bergren, *Prophets and the*

the Israelite understanding that YHWH is the ultimate progenitor and protector of justice, similar to the view of the broader ancient Near East.⁹⁴ God's enforcement powers were, then, the final check on the problem of abuse of power.⁹⁵ The prophets speak repeatedly of such suits (משפט or ריב).⁹⁶ In Hos 4:1–11, for example, the people have strayed due to the straying of their leaders; thus, both the people and their leaders are tried in the divine courtroom and punished for their sins. YHWH's ריב is mentioned three times (vv. 1, 4 [2x]) within the pericope. YHWH's judgment is also upon those who subvert the legal system. Jer 5:26–29 is one such illustration of this principle:

Law (HUCM 4; Cincinnati: Hebrew Union College Press, 1974); Gemser, "Rîb-Pattern," 120–37; J. Harvey, "Le 'rîb-Pattern', Requisitoire Prophetique sur la Rupture de L'Alliance," *Bib* 43 (1962): 172–96; D. R. Hillers, *Covenant: The History of a Biblical Idea* (Baltimore: Johns Hopkins University Press, 1969), 124–31; H. B. Huffmon, "The Covenant Lawsuit in the Prophets," *JBL* 78 (1959): 285–95; J. Limburg, "The Lawsuit of God in the Eighth Century Prophets" (Th.D. diss., Union Theological Seminary [Virginia], 1969); idem, "The Root ריב and the Prophetic Lawsuit Speeches," *JBL* 88 (1969): 291–304; G. E. Mendenhall, "Samuel's 'Broken Rîb': Deuteronomy 32," in *No Famine in the Land: Studies in Honor of John L. McKenzie* (ed. J. W. Flanagan and A. W. Robinson; Missoula: Scholars Press, 1975), 63–74; K. Nielsen, *YHWH as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib-Pattern)* (JSOTSup 9; Sheffield: JSOT, 1978); H. E. von Waldow, *Der traditionsgeschichtliche Hintergrund der prophetischen Gerichtsreden* (BZAW 85; Berlin: de Gruyter, 1983); C. Westermann, *Basic Forms of Prophetic Speech* (trans. H. C. White; Philadelphia: Westminster, 1967); E. B. Wilson, "Rîb in Israel's Historical and Legal Traditions: A Study of the Israelite Setting of Rîb-Form" (Ph.D. diss., Drew University, 1970); and G. E. Wright, "The Lawsuit of God: A Form-Critical Study of Deuteronomy 32," in *Israel's Prophetic Heritage: Essays in Honor of James Muilenburg* (ed. B. W. Anderson and W. Harrelson; New York: Harper & Brothers, 1962), 26–67. While most form critics maintain there is a prophetic lawsuit genre in the Hebrew Bible, there are those who contest this idea. See, e.g., D. R. Daniels, "Is There a 'Prophetic Lawsuit' Genre?" *ZAW* 99 (1987): 339–60; and M. de Roche, "YHWH's rîb against Israel: A Reassessment of the So-Called 'Prophetic Lawsuit' in the Preexilic Prophets," *JBL* 102 (1983): 563–74.

94 T. L. J. Mafico, "Just, Justice," *ABD* 3:1128–29. This is clearly attested in Gen 18:25; Pss 7:6–11; 9:7–9; 17:2; 26:1–3; 28:3–4; 76:9; 94:2–4; 99:1–4; 113:4–9; 119:137, 153–59; 139:23–34; 145:17; and 146:7–9; cf. Ps 97:2. Weinfeld observes that God is deeply connected to the concept of social justice ("Justice and Righteousness," 492). His throne is built upon social justice in Ps 89:15. God loves it in Ps 33:5.

95 Westbrook, "Abuse of Power," 36. See, e.g., Deut 24:14; Isa 3:13–14; Jer 21:12; 22:3; Ezek 22:7, 12–13, 29; Amos 4:1; Mic 2:2; 3:2–3; Zech 7:10; Prov 22:22–23.

96 See, e.g., Isa 3:13–14; Jer 21:12; 22:3; Ezek 22:7, 12–13, 29; Hos 4:1–11; Amos 4:1; Mic 2:2; 3:2–3; Zech 7:10.

For wicked men are found among my people; they lurk like fowlers lying in wait.

They set a trap; they capture men.

Like a basket full of birds, so their houses are full of deceit;
therefore, they have become great and rich.

They have grown fat and sleek; they also cross the bounds in evil deeds.

They do not judge (דן) with justice (דן) the case (דן) of the orphan so that it might succeed;

they do not judge [fairly] (שפט) the case (משפט) of the needy.

“Shall I not punish them for these things?” declares YHWH,

“And shall I not avenge myself on a nation such as this?”

Psalm 82 discloses particularly well how YHWH’s courtroom functions. There, God sues members of the Divine Council for failing to maintain social justice. The Psalmist says:

... God has taken his place in the Divine Council,
among the gods he judges (שפט):

“How long will you judge (שפט) falsely
and be biased toward the wicked? ...” (vv. 1–2)

God orders the “gods, children of the Most High” (v. 6) to:

Judge [fairly] (שפט) the weak and the orphaned;
vindicate (צדק) the right of the lowly and the poor!

Rescue the weak and the needy!

Deliver them from the hand of the wicked!

They have neither knowledge nor understanding,
they go about in darkness;

all the foundations of the earth are shaken (vv. 3–5).

The verdict against them strips them of their immortality (vv. 6–7). Finally in v. 8, the Psalmist declares

Stand witness (קום),⁹⁷ O God, judge (שפט) the earth;
for all the nations belong to you!

97 The semantic range of the verb קום includes certain trial procedures. Deuteronomy 19:15–19 makes clear that, in forensic contexts, the root can mean “to initiate a case” as an accuser or “to stand at trial” as a witness. See also, e.g., Jer 50:31–34; Pss 27:12; 35:11; Job 31:14.

The Hebrew Bible employs several key roots to express these abuses. Westbrook demonstrated that the root גזל is used to connote abuse of authority where loss of property results;⁹⁸ and עשק is used to signify cases where a deprivation of economic benefit or legal right results.⁹⁹ Westbrook also notes the importance of לקח, which can reflect an abusive taking in such cases.¹⁰⁰ For example, it appears in Samuel's speech before the people in 1 Sam 12:3. In it, Samuel is giving "examples of the corrupt practices of a judge."¹⁰¹ Per Westbrook's translation, Samuel queries:

Whose ox have I seized (לקח)¹⁰² or whose ass have I seized (לקח)? Or whom have I deprived through abuse of power (עשק)? Whom have I oppressed (רצי)? Or from whose hand have I taken ransom-money or taken a bribe?¹⁰³ Testify (ענה) against me! Then I will restore it to you.¹⁰⁴

The people respond that he has done none of these things, using the same three significant verbs (1 Sam 12:4). Moreover, Westbrook points out: "Other terms, such as *dk'* and *ršš*, do not appear in any legal passages and seem to be used figuratively, but they may have had some technical meaning [related to abuse of authority], as in 1 Sam 12:3–4."¹⁰⁵

I argue that they clearly have a technical meaning and take up דכא first. Westbrook examines Prov 22:22–23 in his study of גזל:

98 For a full discussion of גזל, see Westbrook, *Studies*, 15–38, esp. p. 36. For a few biblical examples, see Gen 31:31; Lev 5:21; 19:13; Deut 28:29; Isa 3:14; 10:2; 61:8; Jer 21:12; 22:3, 17; Ezek 18:18; 22:29; 33:15; Mic 2:2; 3:2–3; Pss 35:10; 62:11; 69:5; Prov 22:22; Eccl 5:7.

99 For a full discussion of עשק, see Westbrook, *Studies*, 35–38, esp. p. 36. For a few biblical examples, see Lev 5:21; 19:13; Deut 24:14; 28:29, 33; 1 Sam 12:3–4; Jer 7:6; 21:12; 22:3; Ezek 18:18; 22:7, 12, 29; Hos 5:11; Amos 4:1; Mic 2:2; Zech 7:10; Mal 3:5; Pss 62:11; 72:4; 73:8; 103:6; 146:7; Prov 14:31; 22:16; 28:3; Eccl 4:1; 5:7.

100 Westbrook, "Abuse of Power," 35 n. 128.

101 Ibid., 19–20.

102 In citing Hebrew verbs within citations, I list only the root unless otherwise necessary for clarity. Nouns are usually offered in their singular forms.

103 Kemik, "Code of Conduct," 396–97. For further discussion of the bribe as judicial corruption in the Hebrew Bible, see Bovati, *Re-Establishing Justice*, 195. See also, e.g., Exod 23:8.

104 The MT has בפר ואעלים עיני בו, which is usually translated "a bribe to blind my eyes with it. I will restore it to you" (see, e.g., NASV; and NJPS). The LXX has בפר ואעלים עני בי, which makes less sense. R. Gordis proposes בפר ונעלם ענו בי based on column 13 of the Hymns of Thanksgiving (1QH^a). I follow Gordis' suggestion as does Westbrook (*Studies*, 19–20).

105 Westbrook, *Studies*, 38 n. 149.

Do not abuse power to rob (גזל) the poor because they are poor.
 Do not crush (דכא) the poor in the gate.
 for YHWH will sue (ריב) their lawsuit (ריב)
 and rob (קבע) those who rob (קבע) them of life.¹⁰⁶

This proverb refers to that situation wherein God will avenge the rights of the oppressed against their abusers. Its poetic structure (a/b//a'/b') along with the reference to the gate, reveals that דכא has a connotation related to litigation (ריב) in this pericope. The root דכא, therefore, must signify a legal defeat. Yet, it is not just any legal defeat. Because גזל and דכא are in parallel in v. 22, it is a defeat dispensed unfairly by an individual using the legal system in an inappropriate, fraudulent, or abusive manner.

These two verbs are linked again to another term for litigation in Isa 3:14–15, where God accuses the leaders of Israel of abuses against his people:

YHWH will bring a case (משפט)
 against the elders and officers of his people:
 “It is you who have ravaged the vineyard.
 The spoil of your abuse (גזלת) of the poor is in your houses.
 How dare you¹⁰⁷ crush (דכא) my people,
 grind the faces of the poor?” says my lord, YHWH of the Hosts.¹⁰⁸

Again, YHWH will enforce justice where it is not otherwise enforced, avenging with his own lawsuit those who have been robbed of their property via abuse of authority or who have been handed legal defeats through improper manipulation of the legal system. He will sue the perpetrators of such crimes, the elders and officers of his people, who are in positions of power. YHWH will not tolerate abuse of authority, generally, or one that involves the law courts, specifically.

The root רציץ has a connotation similar to דכא in certain passages. The verb רציץ generally means to *break*, *crush*, or *oppress*.¹⁰⁹ It is found coupled with עשק in 1 Sam 12:3–4, as discussed above, and in Deut 28:33; Jer 22:17; Hos 5:11; and Amos 4:1. Just as there is a poetic link established between גזל and דכא,

¹⁰⁶ See also Isa 3:14–15; Lam 3:34–36.

¹⁰⁷ Following the NJPS translation of מלכם.

¹⁰⁸ For other incidences of דכא with this connotation, see Pss 94:5; 143:2–3; Lam 3:34; cf. Ps 72:4.

¹⁰⁹ Bovati acknowledges this as one of the important words related to abuse of authority (*Re-Establishing Justice*, 308).

there is an analogous link created between עשק and רצץ. Moreover, just as גול and דכא were connected to משפט in Isa 3:14–15, עשק and רצץ are connected to משפט in Hos 5:11, where YHWH says:

Ephraim is abused (עשק) and crushed (רצץ) in a lawsuit (משפט).

Consequently, we believe that both דכא and רצץ relate specifically to an abuse of the legal system. In the case of דכא, it results in the loss of property. In the case of רצץ, it results in the deprivation of an economic benefit or legal right. In light of this information, Westbrook's translation of 1 Sam 12:3 should be revised slightly to:

Whose ox have I seized or whose ass have I seized? Or whom have I deprived through abuse of power? Whom have I defeated in court through abuse of the legal process? Or from whose hand have I taken ransom-money or taken a bribe? Testify against me! Then I will restore it to you.

Samuel's list spells out several profound breaches of judicial fiduciary duty in ancient Israel. Deuteronomy 16:19; Ps 82:2; Prov 24:23–24; and 2 Chr 19:7 designate two other such breaches: being partial in decisions and judging wrongly.¹¹⁰

On a related note, scholars have also observed that a scoundrel (בליעל or בן-בליעל; lit., “Belial” or “child of Belial”) is one who disrupts the social order.¹¹¹ These people are architects of chaos and often participate in abuse of legal process. Proverbs 19:28 uses this term to describe a witness who subverts the legal process (עד-בליעל יליץ משפט). The scoundrel violates, for instance, the rule of Lev 19:15:

You shall do no injustice in a lawsuit (משפט); you shall not be partial to the poor or defer to the great, but in righteousness shall you judge (שפט) your neighbor.

It should be noted, however, that such scoundrels may not be explicitly abusing a position of power to disrupt any given legal process.

Finally, the root בצע is also tied to abuse of authority in some verses. In its nominal form, בצע usually represents illicit financial gain, the taking of which

¹¹⁰ For a fuller discussion of judicial corruption in the Hebrew Bible, see *ibid.*, 194–201.

¹¹¹ T. J. Lewis, “Belial,” *ABD* 1:655.

serves to ruin the victim.¹¹² In its verbal forms, **בצע** may describe the fraudulent, violent, or abusive process by which one ruins another or the state of being greedy for such gain.¹¹³ While **בצע** does not confine its meaning to abuse-of-authority situations, several verses bear witness to its use in these contexts. In Ezek 22:12–13, 27 and Prov 28:16, officials use their authority to receive illicit gain. Only those men who hate **בצע** may serve as judges (Exod 18:21). Moreover, **בצע** is coupled with the other vocabulary of abuse of authority in quite a number of verses. It is associated with **עשק** in Isa 33:15; Ezek 22:12; and Prov 28:16. It is connected to both **עשק** and **רציץ** in Jer 22:17. It is also connected to the taking (**לקח**) of bribes in 1 Sam 8:3 and Ezek 22:12 and to the holding of bribes in Isa 33:15.¹¹⁴ It is additionally linked to the perverting of justice (**משפט**) in 1 Sam 8:3. Hence, there are circumstances when illicit gain is derived from abuse of authority, in which case it is marked by the use of the root **בצע**. In conclusion, there is a broad range of vocabulary dedicated to the problem of abuse of power, including abuse of the legal process, in Hebrew.¹¹⁵ This fact indicates that the offense was of utmost concern in ancient Israel.

Along with the vast biblical evidence regarding abuse of authority, there exists extra-biblical evidence of the law: the *Mešad Ḥashavyahu* ostrakon, dated to the time of Josiah, is a Hebrew legal document of practice that appears to be an extra-judicial petition grounded in abuse of administrative authority.¹¹⁶ In this text, a harvester complains to a royal official that his superior, who, it seems, had the right to take possession of his garment pending completion of his assignment, failed to restore it when the harvester's work was finished. The petition is broken; but I believe that F. W. Dobbs-Allsopp successfully reconstructs the document.¹¹⁷ The petition opens: "Please, may my lord, the official, hear a word of his servant!" This is very similar to the petition of the wise woman of Tekoa in 2 Sam 14:12: "Please, may your servant speak a word

112 See, e.g., Gen 37:26; Exod 18:21; 1 Sam 8:13; Isa 33:15; 57:17; Jer 6:13; 8:10; 22:17; Ezek 22:13, 27; 33:31; Hab 2:9; Pss 10:3; 119:36; Prov 1:19; 28:16; cf. Isa 56:11.

113 See, e.g., Jer 6:13; 8:10; Ezek 22:12, 27; Hab 2:9; Prov 1:19; 15:27.

114 The root **בצע** is also contrasted to the hating of bribes in Prov 15:27.

115 P. Bovati would add **בזז**, which typically takes the meaning to *make prey* or to *take plunder*, to this lexicon of abuse of authority (*Re-Establishing Justice*, 308 n. 122). He rests his case on Isa 10:2, where **בזז** is coupled to **גזל**. Indeed, it appears to take on this connotation in this passage, as well as in Ps 109:11. Yet, in these cases, **בזז** seems to be more metaphorical than reflective of the technical vocabulary of law. Hence, I would not include it.

116 Westbrook, "Abuse of Power," 35 n. 128; and Dobbs-Allsopp, "*Mešad Ḥashavyahu* Ostrakon," 49–55.

117 Dobbs-Allsopp, "*Mešad Ḥashavyahu* Ostrakon."

to my lord, the king!"¹¹⁸ Twice within lines 6–9 of the ostracon, the root לקח ("seized") is used. Finally, Dobbs-Allsopp, using 2 Sam 14:2–22 and Westbrook's understanding of לָגַל,¹¹⁹ restores and translates the last four lines of the ostracon as follows:

Truly I am innocent of any off[fence, but he unjustly took (לָגַל)] my garment. Surely it is for the official to re[turn the garment] of your ser[vant. So may you gra]nt him compas[sion and he]ar the [plea of your] servant and do not be silent. . . .

It is, then, a לָגַל-claim involving a loss of property.

Scholars have noted recently that several passages in the Hebrew Bible seem to include petitions that are much like this inscription.¹²⁰ S. B. Parker avers that there is, indeed, a genre that he calls "petitionary narrative" in the Bible that employs the petitionary form. He includes 2 Sam 12:1–7; 14:1–23; 1 Kgs 3:16–27; 20:38–42; 2 Kgs 4:1–7; 6:24–30; and 8:1–6 in the list.¹²¹ J. Schipper, using 1 Kgs 20:38–42 as his exemplar, follows Parker to argue that these petitions may be a critical aspect of a parable that the prophet uses to instruct the king about an error that he has made.¹²² One of these pericopes involves an egregious error

118 Dobbs-Allsopp's translation (*ibid.*, 51). See also S. B. Parker, *Stories in Scripture and Inscriptions*, 15–18 and J. Schipper, "From Petition to Parable: The Prophet's Use of Genre in 1 Kings 20:38–40," *CBQ* 71 (2009): 264–74. Similar wording can be found in Akkadian documents: The idiom *amāt šarri . . . zakāru* refers to the right of a subject to be heard directly by the king in matters of state import. See M. Jursa, "Neubabylonische Briefe," in *Briefe* (ed. B. Janowski and G. Wilhelm; TUAT. NF 3; Gütersloh: Gütersloher Verlaghaus, 2006), 164 n. 15 (regarding GCCI 2 395): "Diese Phrase verweist auf das Recht eines Untertanen, unter Berufung auf das 'Wort des Königs' in einer Rechtsangelegenheit direkt vom König gehört zu werden." Such procedure is a prerequisite for lodging abuse of authority claims and its usage goes back to Neo-Assyrian times (J. N. Postgate, "Royal Exercise of Justice under the Assyrian Empire," in *Le Palais et la Royauté: Compte Rendu* [ed. P. Garelli; RAI 19; Paris: Geuthner, 1974], 417–26). The procedure of *amat šarri zakāru* allows the claimant to skip the abusive level of the hierarchy and have a superior hear the case.

119 Especially Westbrook's analysis of the Parable of the Poor Man's Ewe-Lamb (2 Sam 12:1–14) (*Studies*, 35 n. 128).

120 See, e.g., H. J. Boecker, *Redeformen des Rechtsleben im Alten Testament* (WMANT 14; Neukirchen-Vluyn: Neukirchener, 1963), 67; Dobbs-Allsopp, "Mešad Ḥashavyahu Ostracon," 54 nn. 6, 9; Parker, *Stories in Scripture*, 13–35; and Schipper, "From Petition to Parable," 264–74.

121 Parker, *Stories in Scripture*, 18–35.

122 Schipper, "From Petition to Parable," 264–74.

that was an instance of abuse of authority, namely, Nathan's petition in 2 Sam 12:1–15, which he uses to challenge David's abuse of his royal authority in the indirect murder of Uriah the Hittite so that David might marry Bathsheba.

David, as commander and chief of the army, orders Joab in 2 Sam 11:4–17 to put Uriah on the front lines so that he will be killed:

In the morning David wrote a document to Joab and sent it by the hand of Uriah. In the document, he wrote, "Set Uriah in the forefront of the hardest fighting and then fall back from him, so that he may be struck down and die." As Joab was besieging the city, he stationed Uriah at the place where he knew there were strong warriors. The men of the city came out and fought with Joab; and some of the servants of David among the people fell. Uriah the Hittite was also slain.

David abused his royal authority to make it likely that Uriah would be killed. This was done for his own selfish purposes, that is, to avoid any suspicion that he had committed adultery and to gain the pregnant Bathsheba for himself.

In this case, the prophet Nathan tells the petitionary parable of the Poor Man's Ewe-Lamb (2 Sam 12:1–6) to David:

Then, YHWH sent Nathan to David. He came to him, and said to him, "There were two men in a certain city, the one rich and the other poor. The rich man had very many flocks and herds; but the poor man had nothing but one little ewe lamb that he had bought. He brought it up, and it grew up with him and with his children. It used to eat of his meager fare, and drink from his cup, and lie in his bosom, and it was like a daughter to him. Now there came a traveler to the rich man, and he was loath to take one of his own flock or herd to prepare for the wayfarer who had come to him, so he took the poor man's lamb, and prepared that for the guest who had come to him." Then David's anger was greatly kindled against the man. He said to Nathan, "As YHWH lives, the man who has done this deserves to die; he shall restore the lamb fourfold, because he did this thing, and because he had no pity."

Nathan pronounces the verdict in v. 9:

Why have you despised the word of YHWH to do what is evil in his sight? You have struck down Uriah the Hittite with the sword, and have taken his wife to be your wife, and have killed him with the sword of the Ammonites.

The first part of the verdict is in the interrogative form, but the rest is declarative. Guilty as charged!

Then, Nathan declares the sentence of YHWH concerning the crime:

Thus says YHWH: "I will raise up trouble against you from within your own house; and I will take your wives before your eyes and give them to your neighbor, and he shall lie with your wives in the sight of this very sun. For you did it secretly; but I will do this thing before all Israel and before the sun" . . . Now YHWH has put away your sin; you shall not die. Nevertheless, because, by this deed, you have utterly scorned YHWH, (so) the child that is born to you shall die." (vv. 11–12; 13b–14)

The guilty verdict and David and Bathsheba's punishment for their crimes are communicated through Nathan. Because David confessed in v. 13b, "I have sinned against YHWH," the punishment is mitigated to a vicarious one against their child.¹²³ These few words of confession are deeply significant in the worldview of the ancient Near East. Contrition, repentance, and/or confession will mitigate one's punishment and, when coupled with expiation and a request for pardon, might remove it entirely (e.g., Lev 26:14–42 and 2 Sam 24:1–25).¹²⁴ The purpose of the Mesopotamian incantations is to end the suffering. They are grounded in the idea that one may address one's personal god or another god with more authority so that these gods might take new evidence in the case, hear an appeal of the judgment, or allow one to throw oneself on the mercy of the court through confession, contrition, and expiation. A confession in the divine courtroom serves a profoundly different purpose than does one in a human court.¹²⁵ It does not fundamentally serve as evidence of the crime, but

¹²³ See n. 40, *supra*.

¹²⁴ See also, e.g., Num 5:6–7; 15:30; Ps 32:3–5; Prov 28:13.

¹²⁵ In Josh 7:19–20, Achan confesses to Joshua that he took חָרָם. This confession is used as evidence of the identity of the criminal. This occurs, however, before a human court. The Hebrew Bible records only one investigative confession where the confession is used as evidence. J. Milgrom notes a connection between confession and the reduction of divine punishment (*Cult and Conscience: The "Asham" and the Priestly Doctrine of Repentance* [Leiden: Brill, 1976], 117–19; and idem, *Leviticus 1–16*, 301). He rightly observes that confession is never required of inadvertent sins; expiation alone is sufficient to ward off any difficulties with the deity (see, e.g., Lev 4:1–35; 5:14–15; and Num 15:22–29). Confession is only necessary in cases of deliberate sins (see, e.g., Lev 5:1–4; and Num 5:6–7). Confession does not, however, as Milgrom asserts, "convert deliberate sins into inadvertences" (*Leviticus 1–16*, 301; cf. 315). Confession does not affect the *mens rea* that lies behind the finding of guilt. Crimes are not converted into lesser crimes by confession. Rather,

assists the divine court in determining whether or not the sentence ought to be executed as stated, mitigated, or excused entirely.¹²⁶ Consequently, David and Bathsheba's punishment is mitigated and to be suffered vicariously by their child.

To summarize the concept of abuse of authority, the adage that "power corrupts and absolute power corrupts absolutely" was true in ancient Israel.¹²⁷ Abuse-of-authority claims were understood to be an important corrective in ancient Israelite society, which is reflected in both biblical and extra-biblical documents. Even the king and queen were subject to this law, and YHWH's courtroom heard the case. It is my proposition that, even though the incident of Naboth's vineyard in 1 Kings 21–22 and 2 Kings 9–10 fails to use the primary terms for abuse of authority, Naboth is unable to petition for relief from this judgment, Elijah does not offer a petitionary-type parable, and YHWH never states that he is bringing a *משפט* or *ריב* for Naboth's benefit or to punish the guilty parties, the pericope stands for the proposition that Ahab and Jezebel abuse their royal authority and that a divine *משפט* or *ריב* does occur in YHWH's courtroom against both Ahab and Jezebel. This is revealed with a careful examination of the incident in light of what we now know about the divine courtroom's role in redressing human wrongdoing and the crime of abuse of authority.

Abuse of Royal Authority in Naboth's Vineyard

1 Kings 20: The Literary Setting of 1 Kings 21

1 Kings 20:38–42 is a petitionary narrative. Dobbs-Allsopp notes its relationship to the *Mešad Ḥashavyahu* ostrakon.¹²⁸ Parker included it in his list of such narratives.¹²⁹ Schipper makes the case that, in these verses, "an unnamed

confession is a mitigating factor in the assessment of punishment for the crime committed. See Westbrook, "Abuse of Power," 28. Confession is not, however, effective in all cases. Sins of highest culpability or with some aggravating factor present, such as taking *חרם* (Josh 7:19–26) or direct disobedience of a divine order (1 Sam 15:12–35), typically cannot be mitigated.

¹²⁶ See n. 91, *supra*.

¹²⁷ Attributed to Lord J. E. E. D. Acton (1834–1902). The historian and moralist expressed this opinion in a letter to Bishop M. Creighton in 1887: "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men."

¹²⁸ He observes similar petition language in 2 Kgs 6:26 and notes that 1 Kgs 20:39–40 may be a petition, as well, observing that both Kings passages indicate the start of petition before the king by use of the verb *צעק* ("to cry out") (Dobbs-Allsopp, "Mešad Ḥashavyahu Ostrakon," 54 nn. 6, 9).

¹²⁹ Parker, *Stories in Scripture*, 18–35.

prophet turns a petitionary narrative presented to Ahab into a parable against Ahab.”¹³⁰ In regard to its petitionary form, it is an important text, but it has additional literary significance. It foreshadows what is to come in 1 Kings 21–22 and gives us more insight into Ahab’s personality.

The tale before the petitionary parable (1 Kgs 20:1–31) relates that the Syrian king Ben-Hadad makes demands upon Ahab for tribute. Eventually, Ahab and Ben-Hadad fight two gruesome battles in which Ahab is the victor. Ahab negotiates a treaty with Ben-Hadad that brings lost land back to Israel and spares Ben-Hadad’s life (vv. 32–34). One of YHWH’s prophets is dissatisfied that Ahab has let Ben-Hadad live and had another prophet strike him so that he looked injured in battle (vv. 35–37). At this point, the prophet approaches Ahab with a petitionary parable (vv. 38–43):

Then [the prophet] went and stood before the king alongside the road. He disguised himself with a bandage upon his eyes. When the king was passing by, he cried out to the king and said, “Your servant went out in the midst of the battle. Look, a man turned aside and brought [another] man to me. He said, ‘Guard this man! If he goes missing, then it will be your life in place of his life or you will pay a talent of silver.’ Now your servant was doing this and that and he [the guarded man] was no more!” The king of Israel said to him, “Thus is your judgment. You yourself decided it.” [The prophet] acted quickly and removed his bandage from his eyes. The king of Israel recognized him because he was from among the prophets. [The prophet] said to him, “Thus says YHWH, ‘Since you sent from your hand the man whom I trapped, it will be your life in place of his life and your people in place of his people.’” Then the king of Israel went to his house, toward Samaria, resentful and displeased.¹³¹

Apparently, YHWH expected the king of Syria to die even though this is not made clear in the text. There is, however, a tradition of killing the opposing king. We know it, for instance, from 1 Samuel 15, where Saul is told in unmistakable terms to take no booty (1 Sam 15:3), but allows the king of the Amalekites to live despite YHWH’s command (1 Sam 15:8). Samuel pronounces the sentence in 1 Sam 15:22–23, 26, 28. Ahab does not follow this divine directive, like King Saul before him, and will be similarly punished for his failure, even though he was not directly commanded by YHWH to kill Ben-Hadad. Ahab’s

130 Schipper, “From Petition to Parable,” 264.

131 Translation from Schipper, “From Petition to Parable,” 266.

sentence is death (1 Kgs 20:42); hence, he is already under a capital sentence before the incident of Naboth's vineyard begins.

It is no accident that this incident comes before Naboth's vineyard in 1 Kings. The movement from petitionary narrative to parable is also apparent in 2 Sam 12:1–7 and 2 Sam 14:1–23. Kings generally, and even the greatest of them, David, do not always follow the rules and make the best decisions. Ahab, too, needs a prophet's instruction. Moreover, the unnamed prophet communicates judgment to Ahab, and it is death. The existence of the petitionary parable, the prophetic message of judgment, and the death sentence, together, indicate that YHWH's courtroom is already at work. Ahab is, additionally, characterized in 1 Kings 20 as a loose cannon, capable of breaking any number of YHWH's laws and worthy of losing the throne and his life. Ahab, like Saul, just does not do what he is supposed to do. Ahab tends, moreover, not to take responsibility for his actions. Rather, he becomes brooding and resentful. We are not, therefore, surprised when we soon learn that Ahab is entangled in another failed enterprise, and his response is again brooding and resentful. 1 Kings 20 provides foreshadowing for 1 Kings 21 in its current location.

The Sale

As we recall, King Ahab of the Northern Kingdom wished to purchase the ancestral land of Naboth the Jezreelite, which was adjacent to Ahab's palace, in order to have a vegetable garden (vv. 1–2a). Ahab was willing to exchange the land for a still better vineyard or for money, but Naboth would have none of it, as, at least in his mind, YHWH had forbidden the sale (vv. 2b–3).¹³²

What might we make of this in regard to Ahab's and Naboth's character? Is Ahab a self-centered and undignified man, who is disobedient to YHWH as he seems in the prior pericope or is he asking a simple and legitimate request? Is Naboth a religious man, doing his religious duty? Or is he willful and stubborn? Scholars disagree concerning the alienability of ancestral land and whether or not Naboth could, in fact, sell the land. In 2005, P. T. Cronauer summarized the various schools of thought.¹³³ He states:

The question of the legalities in this regard has traditionally been discussed in terms of whether Naboth "could not" or "would not" sell his vineyard. The effort to find the answer to this question has resulted in highlighting the fact that *there is no common agreement* concerning ancient Israelite legal tradition with regard to property belonging to the

¹³² See Lev 25:23–28; Num 36:7–9. See also Lev 27:22.

¹³³ Cronauer, *Stories about Naboth*, 211–18.

family or tribal inheritance . . . [נחלה]. We find scholars using a variety of terms for . . . [נחלה], including “law,” “legal custom,” “principle,” “tradition”. This variation in terms indicates the diverse interpretations and the lack of agreement among scholars concerning the issue.¹³⁴

Cronauer surveys earlier scholarly positions and identifies seven major views among those who argue that Naboth could not sell his land and three major views (with six sub-positions) among those who argue that Naboth would not sell his land.¹³⁵ Among all these views, I agree with H. Seebass that Naboth would not sell the land, but do not believe Naboth intentionally snubbed the king, which I will address momentarily.¹³⁶

Anyone in the greater ancient Near East had the prerogative to purchase land at a reasonable price.¹³⁷ Land was generally alienable and could be used in pledge,¹³⁸ although people were, in practice, quite hesitant to sell land. The sale of land was usually done only in times of distress, and debt was carried for long periods before any pledged land was finally seized.¹³⁹ Not until the Neo-Babylonian period was land more freely transferred, and even here some hesitation remained.¹⁴⁰ Also in the greater ancient Near East, kings held land much like feudal overlords and had the right to grant it and reclaim it

134 Ibid., 211 (emphasis in original). Some proposals suggest that two different land systems were operating simultaneously (see, e.g., K. Baltzer, “Naboths Weinberg [1 Kön. 21]: Der Konflikt zwischen israelitischem und kanaanäische Bodenrecht,” *WuDNs* 8 [1965]: 79–81, 83–83). I reject these as legally improbable. See further R. Westbrook, “Law in Kings,” in *Book of Kings: Sources, Composition, Historiography and Reception*, 452.

135 Cronauer, *Stories about Naboth*, 211–17.

136 H. Seebass, “Der Fall Naboth in 1 Reg. xx1,” *VT* 24 (1974): 475–78. See also Westbrook, “Law in Kings,” 451–53.

137 Westbrook, “Law in Kings,” 452. Countless contracts for the sale of real property are discussed throughout R. Westbrook, ed., *A History of Ancient Near Eastern Law* (2 vols.; HdO 72; Leiden: Brill, 2003).

138 For discussions concerning pledges of real property in debt instruments of the ancient Near East, see the many essays in R. Jasnow and R. Westbrook, *Security for Debt in Ancient Near Eastern Law* (Culture and History of the Ancient Near East 9; Leiden: Brill, 2001).

139 E.g., with regard to the land purchases by the financially important Egibi family in the Neo-Babylonian period, the records can be linked to previous records that convey a long history of debt owed the seller before the land was finally sold (see C. Wunsch, *Das Egibi-Archiv I: Die Fiedler und Gärter* [2 vols.; Cuneiform Monographs 20A–B; Groningen: Styx, 2000]).

140 J. B. Oelsner, B. Wells, and C. Wunsch, “Neo-Babylonian Period,” in *A History of Ancient Near Eastern Law* (ed. R. Westbrook; 2 vols.; HdO 72; Leiden: Brill, 2003), 2:944–47.

under certain conditions.¹⁴¹ Yet, they also purchased land.¹⁴² The Hebrew Bible continues the reluctance to sell land and seeks, in some instances, to restrict the sale and purchase of land, as well as the right of kings to take land. 1 Samuel 8:14 seems to acknowledge this royal power and fears its abuse. This is the result of the ideology of the Hebrew Bible that believes that YHWH is the true king of Israel, and all land comes from him as Israel's inheritance.¹⁴³ This ideology stands behind Lev 25:23, 34 and explains why YHWH and Samuel do not believe that Israel should have a human king (1 Sam 8:6–7). Nonetheless, some passages indicate that land indeed changed hands and that even kings bought land, such as David in 2 Sam 24:24 and Omri in 1 Kgs 16:24. In short, despite ideological concerns, economic principles applied. Complete inalienability of land would create such economic dysfunctions as to disturb basic economic processes and growth. Moreover, R. Bohlen observes that the law of redemption of Lev 25:25–27 presupposes full alienability.¹⁴⁴ Thus, Leviticus 25:23, 34 is idealized law rather than lived law. In my view, then, little land was so restricted as to be unalienable.¹⁴⁵ It is additionally unlikely that Ahab had absolutely no grounds for approaching Naboth because, if the sale were void by operation of law, Ahab could never have acquired good title.¹⁴⁶ As a result, I maintain that most land in ancient Israel could be sold for its fair market value as it was in the greater ancient Near East, subject to certain restrictions and popular anti-sale prejudices.¹⁴⁷ If land were sold in a distress situation, redemption might possibly have been available, but that, too, is not absolutely certain as an historical reality. Moreover, any offers to buy land at fair market value could be accepted or rejected at will. Hence, if we were to speak about what was happening historically in ancient Israel, Ahab would probably have the right to purchase the land at fair market value for his own or state purposes, and Naboth would have the right to refuse to sell for any reason at all.¹⁴⁸ Given the general reluctance to sell one's ancestral land, Ahab might have expected

141 Westbrook, "Law in Kings," 453; cf. P. J. Berlyn, "The Blood of Naboth," *JBQ* 20 (1991–1992): 242–43.

142 Westbrook gives an example from Emar ("Law in Kings," 454 n. 26).

143 See, i.a., Num 26:53–56; 33:54; 36:2; Deut 10:9; 18:1; 26:1, 8; Josh 11:23; 13:6.

144 R. Bohlen, *Der Fall Nabot: Form, Hintergrund und Werdegang einer alttestamentlichen Erzählung (1 Kön 21)* (Trier Theologische Studien 35; Trier: Paulinus Verlag, 1978), 339; cited by Westbrook, "Law in Kings," 452.

145 Westbrook, "Law in Kings," 453.

146 Ibid. Cf. Seebass, "Fall Naboth," 476.

147 See further R. Westbrook, "Law in Kings," 452; cf. Bohlen, *Der Fall Nabot*, 339–49.

148 See Seebass, "Der Fall Naboth," 477. See also Westbrook, "Law in Kings," 453.

such a refusal.¹⁴⁹ Ahab's offer to exchange the land for a better piece, however, should have overcome the general reluctance to sell and induce Naboth to accept Ahab's offer. Naboth's claim that he is *forbidden* by YHWH to sell it might well be construed, in this case, as excessive religious scrupulousness. It is unlikely to be an intentional snub because to deny one's king the right to purchase one's land might be considered to be unusual and somewhat risky behavior. It could cause a king to lose face and bring negative consequences upon the perpetrator.

We must remember, however, that this pericope is more literature than historiography and even historiography, as a narrative form, is subject to the importation of ideology.¹⁵⁰ The author and redactors are perfectly free to embed as much ideology and as few actual historical facts as they see fit. They have an implied reader in mind and only need sufficient points of contact with that reader's experience to make the scene live for the reader.¹⁵¹ In the world-view of the story, we should understand that Ahab is the most sinful king of all kings (cf. 1 Kgs 16:30–33), already under a death sentence, and is currently in

149 A. Šanda maintains that Naboth's primary motivation is attachment to the land (*Das Erste Buch der Könige*, 461–62). In this aspect I agree.

150 Historiography, as a narrative form, is also subject to the importation of ideology. See, i.a., H. White, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore: Johns Hopkins University Press, 1973); and K. L. Younger, *Ancient Conquest Accounts: A Study in Ancient Near Eastern and Biblical History Writing* (JSOTSup 98; Sheffield: Sheffield Academic, 1990).

151 On the implied reader, see esp. W. W. Iser, "Indeterminacy and the Reader's Response in Prose Fiction," in *Aspects of Narrative: Selected Papers from the English Institute* (ed. J. H. Miller; New York: Columbia University Press, 1971), 1–45; idem, *The Implied Reader: Patterns of Communication in Prose Fiction from Bunyan to Beckett* (Baltimore: Johns Hopkins University Press, 1974); idem, *The Act of Reading: A Theory of Aesthetic Response* (Baltimore: Johns Hopkins University Press, 1978); idem, "Talk Like Whales: A Reply to Stanley Fish," *Diacritics* 11 (1981): 82–87; S. Mailloux, *Interpretive Conventions: The Reader in the Study of American Fiction* (Ithaca, N.Y.: Cornell University Press, 1982); idem, "Learning to Read: Interpretation and Reader-Response Criticism," *Studies in Literary Imagination* 12 (1979): 93–108; and P. J. Rabinowitz, *Before Reading: Narrative Conventions and the Politics of Interpretation* (Columbus: Ohio State Press, 1987). See also R. Holub, "Reception Theory: School of Constance," in *The Cambridge History of Literary Criticism*. Vol. 8: *From Formalism to Poststructuralism* (ed. R. Selden; Cambridge: Cambridge University Press, 2008), 319–46; E. V. McKnight, "Reader-Response Criticism," in *To Each Its Own Meaning: An Introduction to Biblical Criticism and Their Application* (ed. S. L. McKenzie and S. R. Hayes; Louisville: Westminster John Knox, 1993), 197–219; and P. J. Rabinowitz, "Other Reader-Oriented Theories," in *The Cambridge History of Literary Criticism*. Vol. 8: *From Formalism to Poststructuralism* (ed. R. Selden; Cambridge: Cambridge University Press, 2008), 375–403.

a brooding and resentful state of mind. We readers should, therefore, understand that Ahab is villainous, Naboth is virtuous, and accept Naboth's claim concerning his land as, at least, within the realm of legitimate, based on Lev 25:23, 34 and similar texts. Ahab understands these restrictions and prejudices and is, therefore, prepared to stretch the law to get what he wants; and he, therefore, approaches Naboth with excellent terms, hoping to induce him toward a favorable response. Naboth, to the contrary, is a strict constructionist of the religious law;¹⁵² he may, in fact, be religiously over-scrupulous and is very much attached to his land. In other words, they interpret the spirit of the law differently. Given the pro-Leviticus 25 ideological views of the authors and redactors, Naboth is in the right when refusing Ahab with the claim that YHWH has forbidden him to sell. Yet, Naboth did not intend to snub Ahab, which is inconsistent with his religious outlook; rather he truly believed that he could not sell and so refused Ahab's most generous offer.

Ahab, at the rejection, became even more resentful, sullen, and withdrawn than he was at the end of 1 Kings 20, and, eventually, he became so depressed as to lose his appetite (vv. 4–6). Ahab certainly does not act in the poised and dignified manner that we might expect of kings—although one can hardly say that Saul, David, or Belshazzar, by way of example, always acted in poised and dignified ways as reported in the Hebrew Bible.¹⁵³ The dejected pall that comes over Ahab is another sign, to my mind, that he knows that Naboth is in the right. If this were an intentional snub, he would probably have other alternatives for relief from the snub and would not be in this state.¹⁵⁴ Ahab is also not terribly smart because he seeks to replace a productive vineyard with a personal vegetable garden. This is a very poor decision economically.¹⁵⁵

Yet, Ahab may be showing his villainy when he reports to Jezebel in v. 6 that Naboth responded to his offer thus: "I will not give you my vineyard." Let us examine closely the different statements regarding Naboth's failure to sell the garden in 1 Kings 21.

152 J. Wellhausen argued: "Naboth . . . true to the conservative instincts of his class, refuses on religious grounds to alienate his patrimony (see Lev 25:23ff.; Num 36:7ff.)" (*Prolegomena zur Geschichte Israels* [3d ed.; Berlin: Georg Reimer, 1886], 301).

153 E.g., 1 Samuel 28; 2 Sam 6:16; 11; Dan 5:1–9.

154 Disagreeing with H. Seebass, who suggests that the king's anger is a response to an intentional affront by Naboth ("Fall Naboth," 475–77).

155 E. F. Davis, *Scripture, Culture, and Agriculture: An Agrarian Reading of the Bible* (Cambridge and New York: Cambridge University Press, 2009), 112.

Verse	Speaker	Report of Naboth's Failure to Sell
v. 3	Narrator reporting about Naboth	"YHWH forbids that I should give you my ancestral inheritance."
v. 4	Narrator reporting about Naboth from Ahab's perspective ¹⁵⁶	"I will not give you my ancestral inheritance."
v. 6	Ahab reporting to Jezebel his perception of what Naboth said	"I will not give you my vineyard."
v. 15	Jezebel's perception regarding what Naboth said	"the vineyard . . . he refused to give you for money."

The accounts of Naboth's failure to sell his vineyard continue to shorten, while we readers are offered different perspectives on the subject. What Ahab omits in his shortened account of the events is the reason that Naboth gives for refusing the offer, "YHWH forbid" the sale of "my ancestral inheritance" (v. 3), and what the generally reliable and truth-relating third-person narrator says is the reason that Naboth refused the offer, it is his "ancestral inheritance."¹⁵⁷ Ahab conveys the impression to Jezebel that Naboth had no reasonable grounds for refusing his generous offer. Ahab's response to Jezebel indicates, for certain, that he is a less-than-reliable character. If we are to believe Naboth, Ahab has placed himself in a position superior to YHWH's will, at least as Naboth understands it. If we are to believe the narrator, Naboth has his reasons for making the refusal, which were legitimate. Ahab was simply out of luck in this instance; and he might have reacted with more grace. Instead of bucking up, Ahab makes a report of events to Jezebel that is more to his liking and is, thereby, manipulating

¹⁵⁶ We employ S. Chapman's understanding of literary point of view. He maintains that point of view can be applied along three senses, or dimensions: 1) the perceptual point of view, which is the angle through which the character perceives the story's events; 2) the conceptual point of view, which is a construct of the character's conceptions, attitudes, values, and worldview; and 3) the interest point of view, which is the result of the character's perceptions of what will advantage or disadvantage him or her (*Story and Discourse* [Ithaca: Cornell University Press, 1978], 151–53). A. Berlin argues that this schema can be applied in the study of both biblical narrative and poetry (*Poetics and Interpretation of Biblical Narrative* [Winona Lake, Ind.: Eisenbrauns, 1994], 43–50).

¹⁵⁷ On the unreliable narrator, see W. C. Booth, *The Rhetoric of Fiction* (Chicago: University of Chicago Press, 1961), 158–59.

her through telling an incomplete truth that leaves a false impression. The story boosts his ego, but it also manipulates Jezebel into feeling especially sorry for him, leading her to the events soon to come. It appears that Ahab is much more interested in his own desires than the will of YHWH or Naboth. Naboth's will is not a matter of great import to a king, but YHWH's will should be. To ignore YHWH's will is to ignore the people's best interests. If the king, as the deity's primary legal representative on the earth, does not obey the deity's commands, he is certainly at risk but so is the entire society.¹⁵⁸ It was the king's duty throughout the ancient Near East to mete out justice according to the law of the heavenly realm. This may have been the king's first religious obligation. This manipulation may be about more than boosting his sagging ego, but may be also done in order to encourage the stronger Jezebel to assist him in responding to the perceived affront. Jezebel, following Ahab's report, just notes the refusal, but adds that money was offered—something she must have been told before the offer was made and the story begins. Most curious is Jezebel's omission of Ahab's offer to exchange Naboth's land for better land, which was the strategy most likely to have worked with Naboth if his issue was solely the popular prejudice against the sale of one's land. Nevertheless, whatever Jezebel says, curious or not, it is tainted by Ahab. Thus, we readers should read more readily with the narrator's perspective and against those of Ahab and Jezebel. Naboth had legitimate and compelling reasons for not selling the land in the ideology of the story-world.

Ahab is characterized as weak. He is easily ruffled; he has little emotional fiber; he is unstable; he is manipulative; and he does not take his role seriously. Jezebel discloses this last characteristic when she states in v. 7:

Do you now govern Israel? Get up, eat some food, and be cheerful.

Ahab is just not a creative problem-solver, as is Jezebel, and he is dependent on his wife for a solution. But instead of asking for help, he manipulates it. His lack of creativity is most readily seen in the antithetic parallelism of vv. 6–7 in regard to the giving of Naboth's vineyard.

Verse	Introduction to speech (a//a')	Statement in regard to vineyard (b//b')
v. 6	... but he [Naboth] answered,	"I will not give you my vineyard."
v. 7	His wife Jezebel said to him [Ahab],	"I will give you the vineyard of Naboth the Jezreelite."

¹⁵⁸ Westbrook, "Punishments and Crimes," 5:548.

Clearly, we see here a/b//a'/b', where b' is the opposite of b: Jezebel will do that which Naboth will not do. Implied is that Jezebel can do that which Ahab cannot do.

Additionally, no one, including the narrator, has indicated that Naboth has done a specific wrong; he merely stifles Ahab's will. Given that the pericope as a whole is focused on the issue of will—YHWH's, Naboth's, Ahab's, and Jezebel's—it is more likely that Ahab is making a significant omission in regard to YHWH's actual will than that Naboth is making an overblown addition in this respect. The entire pericope is, in my view, about how Jezebel assists Ahab in fulfilling his desires rather than those of YHWH or his subjects.

The Plot

In response to Ahab's protests and despair, Queen Jezebel hatches a plot to get the land for Naboth. In Ahab's name and under his seal, Jezebel writes letters to the nobles and elders of Naboth's city, instructing them to

[p]roclaim a fast, and seat Naboth at the head of the assembly; seat two scoundrels (בני בליעל) opposite him, and have them bring a charge against him, saying, "You have cursed God and the king." Then take him out, and stone him to death. (vv. 8–10)

P. J. Berlyn notes that Jezebel does not move against Naboth on a political level; rather, this is a personal attack.¹⁵⁹ The affront is not to Ahab's status as a king, but to his personhood.

The first question that arises here is whether or not Ahab knew of the plot at this point. It is possible for two reasons. First, Ahab may have knowingly manipulated Jezebel to bring her to this exact moment.¹⁶⁰ Second, Jezebel has to obtain the seal in some way.¹⁶¹ To the contrary, the elders and nobles receive a letter from Jezebel and report back to her.¹⁶² To their minds, at least, this plot is her doing.¹⁶³ Nevertheless, Ahab may be standing behind the scenes as a

159 See, e.g., Berlyn, "Blood of Naboth," 233.

160 E. F. Davis maintains, without reference to the manipulation, that Ahab may have been in on this from the start: "[T]here are reasons to suspect that Ahab does not say everything he thinks; maybe Jezebel is the designated executioner in a plan he intended from the outset" (*Scripture, Culture, and Agriculture*, 112). She argues that, actually, the land is to be used for a plan of land consolidation and market exploitation against which Naboth rebels (*ibid.*, 111–14, 157).

161 Gray, *I & II Kings*, 182.

162 Westbrook, "Law in Kings," 455.

163 Berlyn, "Blood of Naboth," 246.

hidden co-conspirator from the start. There is simply no way to know for sure from the abbreviated text.

Second, some interpreters have argued that the calling of the fast is an attempt to avoid royal judges and/or to create distance between the royal administration and the lawsuit, as well as to deprive Naboth of time to prepare for trial.¹⁶⁴ To my mind, the fast is merely a pretext for bringing the community together, getting the seating correct at the break-the-fast feast, so that the charges may be brought against Naboth. In the ancient Near East, no preparation for trial was necessary; trials were commonly held immediately upon accusation or after a short investigation.¹⁶⁵ Moreover, elders and nobles were very much a part of the administration of justice in the ancient Near East.¹⁶⁶ Judicial panels could involve the king, his officials, and/or elders in various combinations.¹⁶⁷ The point of the plot is not to distance itself from the legal system but to use it, bent to the queen's (and king's) will, an issue that I will now address.

The False Suit. Jezebel has instigated a false suit against Naboth on a charge of blasphemy against God and king, using the elders and nobles to arrange the matter. The Hebrew Bible prohibits false suit (Exod 20:16; 23:7; Deut 19:16–21; and Prov 19:5, 9).¹⁶⁸ The principle of *lex talionis* operated in such suits; the accuser might suffer the same penalty that his victim would have suffered had he been convicted (Deut 19:19), although the victim could elect to reduce the penalty of his false accuser (Deut 22:13–21).¹⁶⁹ The threat of false suit penalties is what gives Jacob the ability to demand of Laban that he back up his accusation with a suit before the assembly of kinsmen on Jacob's alleged theft of his household gods (Gen 31:36–37). It is also what provokes Laban to enter into a covenant to settle the matter (Gen 31:44). Swearing a false judicial oath was also a criminal offense (Lev 5:4; cf. Num 30:2). These prohibitions stand equally in ancient Mesopotamia.¹⁷⁰ As reflected in the above explication on abuse of authority, any interference with the legal process, such as judicial

164 See, e.g., A. Rofé, "The Vineyard of Naboth," *VT* 39 (1988): 92; and Seebass, "Fall Naboth," 480–81.

165 Magdalene, *On the Scales*, 65–78 and Westbrook, "Law in Kings," 454.

166 See, i.a., F. Joannès, ed., *Rendre la justice en Mésopotamie* (Saint-Denis: Presses Universitaires de Vincennes, 2000), no. 173; H. Reviv, *The Elders in Ancient Israel* (Jerusalem: Magnes, 1989), 124–25; and Westbrook, "Law in Kings," 453.

167 Magdalene, *On the Scales*, 56–57.

168 Cf. Zech 8:17b; Prov 12:17; 14:5; 21:28; 25:18. See further Wells, *Law of Testimony*, 134–57.

169 Wells, *Law of Testimony*, 155–57.

170 For false suit, see, e.g., Laws of Hammurabi §§1–2; J. N. Strassmaier, *Inschriften von Cyrus, König von Babylon (538–529 v. Chr.)* (Leipzig: Pfeiffer, 1890), no. 332; J. N. Strassmaier,

bribery or swearing false oaths, was a serious offence because such conduct undermines the very integrity of the legal system. No justice is possible in the face of such abuses. This is the issue that Laws of Hammurabi §5 and Lev 5:4 are seeking to address. Jezebel's use of elders, who have judicial functions in ancient Israel, to bring a false suit is a *prima facie* case of interference with or disruption of the legal system and an abuse of her royal authority. N. M. Sarna states that Jezebel is "[w]ielding corrupt royal influence."¹⁷¹

Furthermore, Jezebel instructs the elders and nobles to use two scoundrels as witnesses against Naboth. First, we observe that we have two accusers in the case, which is often required in biblical law, especially in public, high culpability crimes.¹⁷² We observe further that a בִּלְעֵל or בֶּן-בִּלְעֵל is one who disorders the social order; he creates institutional and social chaos; he is happy to participate in abuse of the legal process, which may include being a false witness. He does not necessarily hold any position of power; rather, he is more commonly a tool of those in power, as in this instance. In the instant case, these scoundrels are mere lackeys of Jezebel and her nobles and elders. Naboth does not have a chance here because the trial would bring two accusers against one victim with no witness to support his position.¹⁷³

On Blasphemy. We must also consider that this is not just any false suit: it is one involving blasphemy against both God and king (Exod 22:27), which is intentional on Jezebel's part. The crime of blasphemy is one of the public high culpability crimes.¹⁷⁴ Such acts offend YHWH and pollute not only the offender,

Inscripfen von Nabonidus, König von Babylon (555–538 v. Chr.) (Leipzig: Pfeiffer, 1889), no. 13. For false testimony, see, e.g., Laws of Hammurabi §§3–4.

171 Sarna, "Naboth's Vineyard Revisited," 120.

172 Numbers 35:30 calls for multiple witnesses in the context of a murder case. Deuteronomy 17:6–7 demands such in the case of apostasy. But see Deut 13:7–12 where summary execution is permitted in the case of apostasy. Deuteronomy 19:15 refers to such a requirement with respect to any iniquity or sin. B. Wells has argued convincingly, in his study of testimony in the Hebrew Bible, that the two-witness rule was growing in import through the Neo-Assyrian period until it reached ascendancy in the Neo-Babylonian period, and that this pattern was imitated in Israelite law (*Law of Testimony*, 83–132). On public high culpability crimes, see Westbrook, "Punishments and Crimes," 5:548.

173 Here, I disagree with Westbrook when he asserts: "Two witnesses claim to have heard offending words; Naboth would have denied having uttered them. The only issue would be (his and their) credibility" ("Law in Kings," 454). Credibility is certainly always an issue. Nonetheless, in this legal world, two witnesses are usually demanded for the win, even on the defendant's side. See further Magdalene, *On the Scales*, 78–88; and Wells, *Law of Testimony*, 108–26.

174 On blasphemy as a high culpability crime, see Westbrook, "Punishments and Crimes," 5:548. See also Sarna, "Naboth's Vineyard Revisited," 121–22.

but also the whole society through the concept of corporate responsibility.¹⁷⁵ The gravity of the offense demanded that the culture remove and expiate this pollution through the perpetrator's death.¹⁷⁶ According to 1 Sam 3:14, however, the blasphemy of the sons of Eli is not subject to expiation, probably because they are of a priestly line with a higher duty of care. The penalty also could include forfeiture or confiscation [hereinafter called "forfeiture"] of the perpetrator's property to the king (to be discussed further below)¹⁷⁷ and the possible destruction of his line.¹⁷⁸ If the crime and its pollution are not handled appropriately, YHWH's judicial court might additionally bring divine retribution upon the community at large. Blasphemy is an inexcusable capital offense that, if ignored, puts the entire Israelite community at risk.

The extremity of the punishment is what allows this plot to work. If Jezebel should secure a conviction against Naboth for blasphemy, she will also secure Naboth's death (v. 14), the death of his sons (2 Kgs 9:26), and his vineyard for

175 Westbrook, "Punishments and Crimes," 5:548; idem, "Law in Kings," 454. See, e.g., Isa 9:3–20; cf. Pss 10:12; 17:11, 22. J. S. Kaminsky articulates the underlying principle of corporate responsibility in ancient Israel: "I call this dimension [of Israelite religion] corporate responsibility, by which I mean the way in which the community as a whole is liable for the actions committed by its individual members. Corporate responsibility is an important concept because it is a fundamental theological principle in ancient Israel that God relates not just to autonomous Israelites, but to the nation as a whole. Inasmuch as God relates to the community as a whole, he holds each member of the nation to some level of responsibility for the errors of any other member of that community. Not only is one responsible for one's own proper behavior, but one must also actively prevent others from sinning" (*Corporate Responsibility*, 11).

176 See Lev 24:10–24 (by stoning); 1 Sam 3:1–4:22 (through warfare and other acts of God); 1 Kgs 21:1–29 (by stoning); 2 Kgs 19:4–38 and its parallel in 2 Chr 32:17–23 (by assassination); and Dan 3:29 (being torn limb from limb). Where the defendant was, indeed, executed, the responsibility for his death, what is called his bloodguilt in the Hebrew Bible, rested upon the offender, himself, and no right of revenge rested in his family. On bloodguilt, see Exod 22:1, 2; Lev 17:4; 20:9, 11, 12, 13, 16, 17; Num 35:27; Deut 19:10; 21:8; 22:8; 2 Sam 21:1; Ezek 33:5; Pss 51:16; 106:38; Prov 28:17.

177 *Forfeiture*, as understood in several of the Common Law legal systems based on British law, and *confiscation*, as understood by the Civil Law legal systems based on Roman Law and Britain, is the legal principle by which the state takes all the property that was involved in a crime owned by the perpetrator. For its use in the Hebrew Bible, see the discussion below.

178 1 Sam 3:13. This is also true of other offenses to YHWH and to hierarchical superiors, especially kings. See, e.g., Deut 13:12–16; Josh 7:24–25; 1 Sam 22:11–19; and 2 Kgs 25:6–8. See further Westbrook, "Law in Kings," 454.

King Ahab (v. 15). The first two are obtained soon after the conviction, and an action for legal forfeiture will ripen such that Ahab is entitled to the land, a point to be addressed further below.

Given the gravity of blasphemy in ancient Israel and the equal penalties accorded under the false suit provisions, it is surprising that the elders and nobles obey the orders that Jezebel issues under Ahab's name and seal (v. 11). From the perspective of the writer of 1–2 Kings, the whole society under Ahab is apparently corrupt—leaders and followers. The only person who will challenge these royals is Naboth. Hence, two judicial obstructionists, unethical scoundrels, come to sit with Naboth as instructed and publicly bring false charges of blaspheming both God and king (vv. 12–13a).

The text does not report the trial verdict, but we do find the narrator's account of the execution, which requires that a guilty verdict was previously issued:

So they took him outside the city, and stoned him to death. Then they sent to Jezebel, saying, "Naboth has been stoned; he is dead." (vv. 13b–14)

Naboth is killed pursuant to Lev 24:10–24; that is, stoned outside the city.¹⁷⁹ The abbreviated account and contraction of time gives one a sense that this was a rushed process, as is typical of a kangaroo court.

Again with a rush of time, the 1 Kings 21 pericope jumps without delay into Ahab's taking of the land (v. 15):

As soon as Jezebel heard that Naboth had been stoned and was dead, Jezebel said to Ahab, "Arise, take possession of the vineyard of Naboth the Jezreelite, which he refused to give you for money; for Naboth is not alive, but he is dead."

Jezebel, upon hearing of Naboth's execution from her minions (v. 14), immediately commands Ahab to go take the land (v. 15). We do not even learn of the death of Naboth's sons here. Rather, that is left to 2 Kgs 9:25–26 to report. Of more importance is the phrase that Jezebel uses to inform Ahab of Naboth's death: "Naboth is not alive, but he is dead." This is not an exact replica of v. 14, which we chart:

¹⁷⁹ See n. 190, *supra*.

Verse	Speaker	Report
v. 13bβ	Unnamed people to Jezebel	"Naboth has been stoned; he is dead."
v. 14b	Narrator from Jezebel's perspective	"Naboth had been stoned and was dead."
v. 15bβ	Jezebel to Ahab	"for Naboth is not alive, but he is dead."

The difference between vv. 13bβ and 14b and v. 15bβ is not trivial according to R. Westbrook.¹⁸⁰ The phrase "he is dead" indicates that one has been convicted of a capital offense and no pardon has been forthcoming (2 Kgs 20:1).¹⁸¹ The phrase "is not alive," is a legal term-of-art meaning usually that someone has been summarily executed without benefit of trial, as in the case of catching someone in the act of doing something grievous and/or dangerous (cf. Deut 13:7–12; Deut 17:2–7). Westbrook goes on to argue, however, that, in certain cases, the words "not live" indicate that something was awry with the legal process that led to the capital punishment: "Without such special justification, however, 'not live' used alone symbolizes perversion of the judicial process."¹⁸² From this position, Westbrook argues that the words relay to Ahab the fact that Naboth has been killed without due process of law. I am in agreement with these principles. In the first two verses in the table above, the report is that Naboth has been stoned pursuant to a guilty verdict on a capital offense without the benefit of seeking a royal pardon. In the third case, Jezebel reports to Ahab that the execution has been both summary and pursuant to an illegitimate trial process.

From here, Westbrook argues that Ahab is now in the know, and he, therefore, becomes an accessory-after-the-fact.¹⁸³ It is true that Ahab must now

¹⁸⁰ Westbrook, "Law in Kings," 456–57.

¹⁸¹ Ibid. See also Gen 31:32; 2 Kgs 10:19; 20:1; and R. Westbrook, "A Matter of Life and Death," *JANES* 25 (1997): 65–67. Westbrook's legal point should be contrasted to the narrative interpretation of M. Sternberg, who comprehends the textual change from vv. 13bβ and 14b to v. 15bβ as follows: "Having already done the dirty work on her husband's behalf, Jezebel continues to spare his tender conscience by watering down the brutal 'Naboth had been stoned and he died' into the generalized 'Naboth is not alive, but dead' " (*The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* [Bloomington, Ind.: Indiana University Press, 1985], 408).

¹⁸² Westbrook, "Law in Kings," 456.

¹⁸³ Ibid., 457; cf. Y. Zakovitch, "The Tale of Naboth's Vineyard," in *The Bible from Within* (ed. M. Weiss; Jerusalem, Magnes, 1984), 398.

know of the plot. It does not mean, however, as Westbrook seems to argue, that Ahab did not know of the conspiracy earlier. Jezebel could be merely reporting to Ahab that the conspiracy of which he was a member has fulfilled its purpose. Whenever Ahab began to participate in the conspiracy to murder Naboth and acquire his land, he is guilty, as I will explain further below.

The Forfeiture. Forfeiture of property was a remedy at law or a royal right throughout the ancient Near East.¹⁸⁴ It involves the taking of a criminal's property to which he has good title. The property is taken because it belongs to a criminal, who in most cases has been executed. Thus it is a right of the king related to any capital crime, including blasphemy.¹⁸⁵ Forfeiture should be distinguished from governmental seizure of stolen property to which a thief does not have good title. In such cases, the property was seized as evidence of the crime and its perpetrator, as well as for the purpose of returning it ultimately to its rightful owner.¹⁸⁶ One provision of an ancient Near Eastern law collection and a few legal documents of practice testify to the existence of forfeiture. Middle Assyrian Laws B 3 involves a situation wherein one of three brothers, who own an undivided inheritance, commits treason and, thereby, forfeits his share of the undivided estate; the king will take the criminal's share, which the brothers will not inherit.¹⁸⁷ N. M. Sarna discusses

an Akkadian legal tablet from Alalakh from the reign of King Niqmepa, bearing the seal impression of his father, King Idrimi, and deriving from the fifteenth century BCE, [which] records that a certain Arpa had become a criminal, a *bel mašikti*, a term that has been shown to carry

184 F. I. Anderson denies that this right existed in "The Socio-Juridical Background of the Naboth Incident," *JBL* 85 (1966): 46–47, which Sarna finds somewhat bewildering ("Naboth's Vineyard Revisited," 122 n. 12), as do I. As additional evidence for the right of forfeiture Sarna cites rabbinic sources: "This basic question exercised the medieval Jewish exegetes Rashi, David Qimḥi, Gersonides, and Abrabanel. They all maintained that the 'legal' justification for Ahab's final act was the existence of a law that the estate of a felon executed by royal decree escheated to the crown. This interpretation follows the majority view put forth in a debate among the tannaim of the second century CE, as recorded in rabbinic sources, although it is not clear whether the forfeiture was understood by these authorities to be a part of the penalty for the commission of high crime or a logical consequence of the punishment."

185 Westbrook, "Law in Kings," 454–56.

186 See, e.g., *Cuneiform Texts from Babylonian Tablets* 22, no. 230; J.-M. Durand, *Texts babyloniens d'époque récente* (Recherche sur les grandes civilisations 6; Paris: Éditions A.D.P.F., 1981), no. 6; 2 Kgs 8:1–6 (following Westbrook, "Law in Kings," 450 n. 18).

187 Westbrook, "Law in Kings," 455.

the implication of treason. He was executed for his crime, and his estate escheated to the palace.¹⁸⁸

Another text from Alalakh documents that an individual recovers his payment of bride-wealth from the king after the man's future in-law was executed for treason and his property confiscated.¹⁸⁹ Several records from Emar expose that the king and city effected land sales with criminally forfeited property, which was taken because each owner had "committed a great sin against his lord and the city of Emar."¹⁹⁰ The sin is never recorded (possibly because it was taboo)¹⁹¹ and could be anything from a failure to pay taxes to treason and blasphemy.¹⁹²

Another forfeiture case that presents certain similarities to Naboth's is a sale document that records the disposal of property that was given to the Ezida temple by King Nebuchadnezzar.¹⁹³ Some or all of the owner's property was forfeited due to serious offenses against King Nebuchadnezzar.¹⁹⁴ The translation of the obverse of this text, lines 1–30, follows:¹⁹⁵

B. had committed crimes, planned evil, did not observe the oath (obligation) toward his royal lord, but constantly schemed betrayal. Nebuchadnezzar, king of Babylon, . . . revealed thoroughly the evil machinations of B. and uncovered his conspiracy. Publicly he proved his misdeed that he had committed, looked angrily at him, and ordered his no-life by cutting his throat. Concerning the property of his father N. that Nabopolassar, king of Babylon . . . had counted as property of the temple

188 Sarna, "Naboth's Vineyard Revisited," 125.

189 I. M. Rowe, "Alalakh," in *A History of Ancient Near Eastern Law* (ed. R. Westbrook; 2 vols.; HdO 72; Leiden: Brill, 2003), 1:708–9, 716; also discussed by Westbrook, "Law in Kings," 455.

190 R. Westbrook, "Emar and Vicinity," in *A History of Ancient Near Eastern Law* (ed. R. Westbrook; 2 vols.; HdO 72; Leiden: Brill, 2003), 1:688.

191 See, e.g., Joannès, *Rendre la justice*, no. 148.

192 Westbrook, "Emar and Vicinity," 1:688.

193 E. Weidner, "Hochverat gegen Nebukadnezar II. Ein Grosswürdenträger vor dem Königsgericht," *AfO* 17 (1954–56): 1–9; see also the new correlations by M. Jursa, "Kollationen," *NABU* (2001): 100D, which allows for a significantly refined understanding.

194 This tablet has been discussed three times in relations to Naboth's vineyard: Z. Ben-Barak, "The Case of Naboth in the Light of Documents from Mesopotamia—A New Perspective," in *Proceedings of the Ninth World Congress of Jewish Studies*. Division A. *The Period of the Bible* (Jerusalem: Magnes, 1986), 16–17 [Hebrew]; N. Na'aman, "Naboth's Vineyard," 203–4; and Westbrook, "Law in Kings," 453–54, 456.

195 Translation is courtesy of C. Wunsch.

Ezida, (but) of which N. had kept something illegally, and B. had taken it over, (26–27) Nebuchadnezzar, king of Babylon, . . . counted by his just sentence, that is unchangeable like the word of the gods, the balance of the property of N. in city and country, as much as there is, as property of the temple of Nabû and sold his slaves for silver.

It seems that B. had committed treasonous acts of some kind against Nebuchadnezzar. He was tried in an assembly with the king present. He was convicted and Nebuchadnezzar ordered his immediate execution without benefit of pardon: “[He] looked angrily at him and ordered his no-life by cutting his throat.”¹⁹⁶ B. was in possession of some land, which is the subject of the sale that this tablet records. He had inherited it from his father, N. The father was in possession of this land, or at least some part of it, illegally according to Nebuchadnezzar’s father, Nabopolassar. When B. was executed, the land was forfeited, along with some slaves. Because at least some of the land actually belonged to the Ezida temple, Nebuchadnezzar transferred the land and the proceeds of the slave sales to the Ezida temple. To the extent that the land was owed to the temple, one might argue that this is a simple seizure of illegally-held property.¹⁹⁷ Nevertheless, property clearly in excess of, or unrelated to, the illegally-held property was also taken. The king did not bother to apportion the amounts and simply gave the entirety of the property to the temple. Now, the temple is selling off the land and explains in the document, for title purposes, how it acquired the property.

Several points of contact can be seen between this case and that of Naboth. First a landowner is put on trial on royal initiative. Second, the trials take place in an assembly, although in the Akkadian text the king is also present. Third, both cases involve a serious offense against the king. Fourth, the individual is executed summarily, without pardon, as is indicated by the words “[Nebuchadnezzar] ordered his no-life.” Fifth, his property is seized due to his criminal activity. This case is also different from Naboth’s case in that Naboth’s trial is bogus. Moreover, in the Akkadian text, the king gives the field and sale proceeds to the temple in excess of what the perpetrator’s father owed for the benefit of the temple and whole society. Ahab seeks to use the forfeited property for his own purposes. Ahab’s case is about personal gain, not statecraft.

The Hebrew Bible reports the existence of the right of forfeiture outside of 1 Kings 21. The king did not, in most cases, actually retain the property but destroyed it instead, treating the property in certain respects as *herem*. This

196 Westbrook, “Law in Kings,” 456.

197 N. Na’aman’s interpretation implies this (“Naboth’s Vineyard,” 203–4).

is reflected in 1 Sam 22:19, where Saul puts infants, oxen, donkeys, and sheep of the priest of Nob to the sword due to the priests' treason. Darius orders, in Ezra 6:1–10, that work on the temple and sacrifices should proceed in accord with Cyrus' decree and that anyone who disobeys or subverts the decree will be impaled on a beam of his house and the house destroyed (6:11). Daniel 2:5 reflects that Nebuchadnezzar ordered the Chaldeans both to tell him his dream and interpret it or "be torn limb from limb" and their "houses . . . be laid in ruins." Again, Nebuchadnezzar orders, in Dan 3:29:

Any people, nation, or language that utters blasphemy against the God of Shadrach, Meshach, and Abednego shall be torn limb from limb, and their houses laid in ruins.

Ezra 10:7–8, on the other hand, records an order for forfeiture and not destruction of the property:

They made a proclamation throughout Judah and Jerusalem to all the returned exiles that they should assemble at Jerusalem, and that if any did not come within three days, by order of the officials and the elders all their property should be forfeited, and they themselves banned from the congregation of the exiles.

In this case, the guilty parties would be exiled, and the abandoned property would devolve to the community.

The situation in the Naboth story is another instance of forfeiture, but it proceeds differently from any of the biblical instances cited above. None of the relevant texts report what happens with seized real property. Land cannot be destroyed, only stripped bare of fixtures, movable personal property, crops, livestock, and the like. In Naboth's case, it is clear that Ahab and Jezebel intend to take the land, with the fruits of the land intact, for their personal enjoyment. Ahab is solely interested in benefiting himself by taking the ill-gotten gain.

Ahab springs into action once he learns of Naboth's death from Jezebel:

As soon as Ahab heard that Naboth was dead, Ahab arose to go down to the vineyard of Naboth the Jezreelite, to take possession of it. (v. 16)

By charting vv. 15–16 against each other, we also observe that there is more detail about Jezebel's activity than Ahab's. Moreover, Ahab does not speak; the narrator does the talking for him.

Narrator's Report	About Jezebel (v. 15)	About Ahab (v. 16)
Time report	As soon as Jezebel heard	As soon as Ahab heard
Subject of execution	that Naboth	that Naboth
Method of execution	had been stoned and	
Naboth's death report	was dead,	was dead,
Introduction of protagonist's activity	Jezebel said to Ahab	Ahab
Account of activity:	"Arise, take possession of the vineyard of Naboth the Jezreelite, which he refused to give you for money; for Naboth is not alive, but he is dead."	arose to go down to the vineyard of Naboth the Jezreelite, to take possession of it.

Jezebel commands Ahab to "arise," and he "arose to go." Jezebel commands; Ahab responds like a dog. Words are particularly sparse in regard to Ahab in this pericope. The narrator relates more information about Jezebel's speech than Ahab's actions. She is clearly the more powerful and active of the two characters. Nevertheless, it is Ahab who dashes off to the land to take possession of it, to benefit from this abuse of royal power and this corruption of the legal system. Returning to Samuel's soliloquy in 1 Sam 12:3, we observe that while Samuel had not seized anyone's property, Ahab has. While Samuel had not abused his power, Ahab has. While Samuel had not defeated anyone in court through an abuse of the legal process, Ahab has. Although the usual Hebrew root is not present in this pericope, the facts of the case denote that the particular abuse of royal authority is of the **נָדַב**-type, wherein an powerful individual uses the legal system in an inappropriate, fraudulent, or abusive manner to take property from another in order to gain an economic advantage. The same principles are at work in Prov 22:22–23 and Isa 3:14–15.¹⁹⁸

Ahab's Culpability and Derivative Crimes. In the ancient Near East, co-conspirators, aiders and abettors of criminals, accessories-after-the-fact, and receivers of stolen goods, who operated down the line from a thief, were all

198 See also Pss 94:5; 143:2–3; Lam 3:34; cf. Ps 72:4.

liable in the same degree as the original criminal or the lead conspirator. For instance, in one Neo-Babylonian text, a supply room official accuses a man of stealing goods from the storeroom over a ten-year period.¹⁹⁹ Temple officials quickly turn the tables on him, inquiring as to why he did not report this sooner. He was clearly under suspicion of participating in the crime as either a co-conspirator or as an aider and abettor. They then demand that the accuser reclaim any goods that he had given to the accused and produce them before the court. The accuser says that the accused had no such goods remaining in his possession, presumably because he had immediately disposed of them. At that point, the court brings in a number of other people from the storeroom to question them as to whether the thief had also taken goods from them. These individuals swear an oath that the accused had not taken any goods from them. After this, the accuser swears that he had tried to stop the accused but that his words were not heeded and that he has not shared in the stolen grain.²⁰⁰ This latter oath is probably proffered to clear the accuser of the charge that he was aiding and abetting the thief by ignoring the situation or by actively participating in the crime as a co-conspirator. Unfortunately, the end of the tablet is broken, so that we do not know the outcome of the investigation.²⁰¹ In another text, the court indicates that a woman would also be considered a thief of temple property if a witness came forward to prove that she aided and abetted the actual thief, who was named in the conditional-verdict document against her.²⁰² Fences are both aiders and abettors to theft and persons liable on the separate crime of receiving and benefiting from stolen goods. A set of three related cases document fences' culpability: YOS 6, 191, YOS 6, 214 and YOS 6, 235. All three texts, written on the same day during the twelfth year of Nabonidus in the Eanna Temple at Uruk, involve a theft or embezzlement by a certain Itti-Šamaš-balaṭu. In YOS 6, 235, the same Itti-Šamaš-balaṭu is charged with theft or embezzlement of temple precious metals. YOS 6, 191 and YOS 6, 214 both address who received the stolen goods from him and another thief, Kalbi-Ba'u, a possible co-defendant. YOS 6, 175 may be a related case, too, because it chronicles another search for the fence of Kalbi-Ba'u by this same

199 TCL 13, 137.

200 Reading against E. W. Moore (*Neo-Babylonian Business and Administrative Documents* [Ann Arbor: University of Michigan Press, 1935], 168–71), who mistranslates the oath.

201 In TCL 13, 181, one Iddinaya, brother of an infamously crooked temple official, Gimillu, is probably under investigation for being Gimillu's aider and abettor.

202 YOS 19, 98.

court just five days earlier.²⁰³ The text known as the Nippur Homicide Trial also stands for the proposition that a silent accessory after the fact is as guilty as the perpetrator.²⁰⁴ As Westbrook reports:

Three men had murdered a priest and then informed his wife of what they had done. She, however, kept her silence. The fate of the three murderers was not in dispute: “as men who have killed a man they are not live men.” The question was whether mercy should be shown to the wife. The court decided it should not; she was deemed equally guilty of murder.²⁰⁵

These same principles operate in biblical law.²⁰⁶ Divine disfavor with aiding and abetting evil is made explicit in Jer 23:14–15. Accessories-after-the-fact are subject to criminal penalties. Proverbs 29:24 is instructive: “One who shares with a thief hates (אִנְשׁ) his own life; he hears the [victim’s] curse, but does not accuse (גָּדַל).”²⁰⁷ Leviticus 5:1 similarly indicates that one who does not accuse when one has knowledge of a public curse of a victim is subject to punishment. Deuteronomy 13:9 declares that one should not shield a lawbreaker. Significantly, in 1 Sam 3:13, God punishes the entire house of Eli because Eli did not rebuke his sons for their blasphemy. As a result, in whatever manner that Ahab participated—whether as an early co-conspirator, as one who gave aid in any manner during the commission of the crime, as an accessory-after-the-fact, or as a mere recipient of the ill-gotten אֶכָּד gains—he is a murderer and a thief.

To conclude the assessment of the plot, Jezebel abuses her royal authority by instigating a false suit against Naboth for blasphemy of God and king in order to give Ahab what he wants but cannot legally have within the worldview of the text. Ahab participates in this crime either by (1) giving Jezebel his seal

203 See also, e.g., V. Scheil, “Notules,” *Révue d’assyriologie et d’archéologie orientale* 14 (1917): 158 (no. 152) and yos 7, 97.

204 See M. T. Roth, “Gender and Law: A Case Study from Ancient Mesopotamia,” in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. V. H. Matthews, B. M. Levinson, and T. Frymer-Kensky; JSOTSup 262; Sheffield: Sheffield Academic, 1998), 173–84.

205 Westbrook, “Law in Kings,” 457.

206 Wells, *Law of Testimony*, 57–58. Westbrook points out that in the case of theft, there can be differences in penalties between a thief and a receiver of stolen goods (“The Deposit Law of Exodus 22,6–12,” *ZAW* 106 [1994]: 396). He addresses, however, only the case of an innocent receiver of stolen goods (397), which is quite different than being a criminal fence.

207 See Wells, *Law of Testimony*, 78–80; contra Geller, “Šurpu Incantations,” 185–86. But see Lev 20:2–5, where the text discusses failure to prosecute the serious offense of worshipping Molech, but does not indicate that any punishment is due to those who remain silent.

so that she can write the letters under his authority and keeping abreast of the conspiracy;²⁰⁸ (2) learning of the conspiracy after Naboth's death and becoming an accessory-after-the-fact; and/or (3) taking the illicitly gained profits of the scheme for his use. It is not only Ahab who goes along with the plot; in fact, everyone seems to go along without challenging it. No one contests this scheme. No one stands up for Naboth. No one accuses the conspirators of false suit or the scoundrels of giving false witness. No one tries to stop Ahab from going to take possession of Naboth's land. Apparently, the society under Ahab is so corrupt that the elders and nobles—those with social, economic, and judicial power—went along with the royal conspiracy against Naboth without question.

The Fall of the House of Ahab: The Divine Courtroom Exacts a Just Penalty

YHWH did not forget Uriah: David and Bathsheba paid for their adultery and David's murder of Uriah by suffering the loss of their child. The prophets are harbingers of God's lawsuits against those who did not obey his word: judgment falls throughout the Hebrew Bible. So too, YHWH does not forget Naboth. YHWH in his courtroom tries Jezebel and Ahab for wrongdoing. They have abused their royal authority, corrupting the legal system, through bringing a false suit on blasphemy and instigating the false testimony of scoundrels against Naboth. They murdered Naboth, and his heirs, and stole his vineyard. The events described in 1 Kgs 21:17–29 and 2 Kgs 9:1–10:11 reflect the working of the divine courtroom, which metes out justice in this case.

YHWH's Judgment: The Verdict and Sentencing. Two versions of YHWH's verdict and sentencing exist in the Hebrew Bible. The first is in 1 Kgs 21:20b–26, which is YHWH's immediate pronouncement through Elijah and a conclusion by the narrator. The second is in 2 Kgs 9:7–10, which is Elisha's prophetic announcement, delivered through one of the company of prophets (9:1), concerning Jehu's kingship. In this section of text, YHWH gives his instruction to Jehu to complete the actual execution of the sons of Ahab and Jezebel. These two passages are clearly from two different sources²⁰⁹ and are set within the text at different times historically: the passages in 1 Kings 21 are from the time of Ahab and the passages in 2 Kings 9 are from the time of Joram and Jehu. The material in 2 Kings 9 seems to be a short summary of the sentencing phase of 1 Kings 21 and does not deal with the trial itself.²¹⁰ Furthermore, within the

208 Cf. Zakovitch, "Tale of Naboth's Vineyard," 398.

209 See n. 2, *supra*.

210 Consequently, A. Rofé suggests that 2 Kgs 9:21–26 is the earlier passage ("The Vineyard of Naboth," *VT* 39 [1988]: 95–96). Na'aman states of this position: "For many years the

2 Kings 9 passages, we may again have two sources, with vv. 25–26 being, in all likelihood, a later addition to the text as they are in the narrator’s voice rather than that of Elijah and they seem to cut the narrative flow.²¹¹ Moreover, these verses add a crime that is not related directly to the case in the rest of the pericope. Despite the multiplicity of sources, some duplication of material in the two accounts exists. It is interesting also to note that the new verdict and sentencing constituents in 2 Kings 9 also contain information unrelated to the events of Naboth’s vineyard. The chart below sets these two prophetic declarations together and, therefore, indicates the colon or verses that are similar and those that are different.

1 Kings 21: Elijah	2 Kings 9: Elisha via an unnamed prophet
(v. 20b) “Because you have sold yourself to do what is evil in the sight of YHWH,	(v. 7a) “You shall strike down the house of your master Ahab,
(v. 21a) I will bring disaster on you; I will consume you,	(v. 7b) so that I may avenge on Jezebel the blood of my servants the prophets and the blood of all the servants of YHWH.
(v. 21b) and will cut off from Ahab every male, bond or free, in Israel	(v. 8a) For the whole house of Ahab shall perish;
(v. 22a) and I will make your house like the house of Jeroboam son of Nebat, and like the house of Baasha son of Ahijah,	(v. 8b) I will cut off from Ahab every male, bond or free, in Israel.
(v. 22b) because you have provoked me to anger and have caused Israel to sin.	(v. 9) I will make the house of Ahab like the house of Jeroboam son of Nebat, and like the house of Baasha son of Ahijah.

story of Jehu’s rebellion was considered an accurate reflection of the event it describes, its version being superior to that of Naboth’s story. The discovery of the Tel Dan inscription of Hazael, king of Aram, demonstrated that, as a historical source, the Jehu story suffers from the same shortcomings as all the other prophetic narratives (“Naboth’s Vineyard,” 212; citing idem, “Three Notes on the Aramaic Inscription from Tel Dan,” *IEJ* 50 [2000]: 100–4; and idem, “The Story of Jehu’s Rebellion: Hazael’s Inscription and the Biblical Narrative,” *IEJ* 56 [2006]: 160–66).

211 On the possible redactional activity within 1 Kings 21, see n. 2, *supra*.

(cont.)

1 Kings 21: Elijah	2 Kings 9: Elisha via an unnamed prophet
(v. 23) Also concerning Jezebel the LORD said, 'The dogs shall eat Jezebel within the bounds of Jezreel.'	(v. 10) The dogs shall eat Jezebel in the territory of Jezreel, and no one shall bury her."
(v. 24) Anyone belonging to Ahab who dies in the city the dogs shall eat; and anyone of his who dies in the open country the birds of the air shall eat."	
(v. 25) (Indeed, there was no one like Ahab, who sold himself to do what was evil in the sight of the LORD, urged on by his wife Jezebel.	
(v. 26) He acted most abominably in going after idols, as the Amorites had done, whom the LORD drove out before the Israelites.)	

The sentencing section of 2 Kings 9 is much shorter than the one in 1 Kings 21. Additionally, the point of the greater narrative impact in the second story is not the lawsuit itself, as in 1 Kings 21, but rather the establishment of Jehu's reign and the final destruction of Ahab's line, the latter of which is divulged in 2 Kgs 9:24–10:11. Interestingly, both sentencing sections have a key element that is not related in the other telling, that is, each adds a crime not related to Naboth. In 1 Kings 21, the unrelated material concerns Ahab's idol worship (v. 26); in 2 Kings 9, the unrelated material concerns Jezebel's destruction of YHWH's prophets in 1 Kgs 18:19 (v. 7b). In the analysis below, I ignore these extraneous events, looking only to those issues related to Naboth and read the two texts together.

In 1 Kgs 21:17, we begin to see God acting. The prophet Elijah receives YHWH's word, which instructs him to meet Ahab in Naboth's vineyard as he attempts to take possession of his illicit gain (v. 18). YHWH has obviously been watching these events and moves quickly because Ahab is still in the process of seizing the land when God instructs Elijah to interrupt the forfeiture:

You shall say to him, "Thus says YHWH: Have you killed, and also taken possession?" You shall say to him, "Thus says YHWH: In the place where dogs licked up the blood of Naboth, dogs will also lick up your blood." (v. 19)

God confronts Ahab through the prophet Elijah on his complicity in the murder. The verdict is put in the rhetorical interrogative, but it is no less a verdict as understood from the verdict against David and Bathsheba: Ahab has killed and has wrongly taken Naboth's land. Although some scholars attribute fault almost entirely to Jezebel,²¹² the text itself does not support this assertion because Ahab is the one whom YHWH confronts, not Jezebel, although Jezebel does receive sentencing. Like in the Bathsheba affair, David is the only one confronted but both David and Bathsheba suffer the same punishment: their child shall die. The direct confrontation of Ahab lends strength to the view that Ahab was in on the plot early.

In the pronouncement of the verdict, we learn a new fact of which we were previously unaware: when Naboth died, dogs licked up his blood. Because this occurred, Ahab will suffer the same. His sentence is capital: he will die, and dogs will lick up his blood. This matching of the penalty to the crime reflects the operation of *lex talionis*, which may be applied to cases of murder (Lev 24:17–21; cf. Exod 21:12, 14) and false suit (Exod 20:16; 23:7; Deut 19:16–21; Prov 19:5, 9).²¹³ One would expect that for murder alone, the sentence would be death for Ahab and Jezebel. Due to the murder of Naboth's descendants via the false suit on blasphemy charges, that the sentence includes the death of the royal heirs is also expected. While YHWH does not confront Ahab directly on the means used in the murder, that is, the false suit, Ahab must suffer the consequences of participating in the false suit and killing Naboth and all his descendants. The addition regarding the dogs is particularly gruesome and

212 See, e.g., R. L. Cohn, "Characterization in Kings," in *Book of Kings: Sources, Composition, Historiography and Reception*, 96; and idem, "The Literary Structure of Kings," in *Book of Kings: Sources, Composition, Historiography and Reception*, 137.

213 See P. Barmash's discussion of *lex talionis* as applied to homicide in *Homicide in the Biblical World* (Cambridge and New York: Cambridge University Press, 2005), 154–77, although the operation of *lex talionis* in the case of homicide is, in fact, far more complicated than she allows. See further Westbrook, "Revenge, Ransom, and Talio," in *Studies in Biblical and Cuneiform Law* (Paris: Gabalda, 1988), 39–88, and idem, "Reflections on the Law of Homicide in the Ancient World," *Maarav* 14 (2006): 145–74.

demeaning. It reflects that Ahab will not have an immediate burial, as Naboth was not apparently afforded. The narrative relates that the punishment mirrors in every detail that which Naboth suffered. This may reflect the false suit and not simply the murder, because death alone would be sufficient. It is through the explicit detail of the punishment that we are able to comprehend the grounds underlying the verdict.

The confrontation continues in v. 20. Ahab knows that he has been found out (v. 20a). Elijah declares:

Because you have sold yourself to do what is evil in the sight of YHWH, I will bring disaster on you; I will consume you, and will cut off from Ahab every male, bond or free, in Israel and I will make your house like the house of Jeroboam son of Nebat, and like the house of Baasha son of Ahijah, because you have provoked me to anger and have caused Israel to sin. Also concerning Jezebel, the LORD said, “The dogs shall eat Jezebel within the bounds of Jezreel.” (vv. 20b–22)

In 2 Kgs 9:7–10, the unnamed prophet transmits to Jehu the words of Elisha, indicating that Jehu will be the one who will

strike down the house of your master, Ahab . . . [f]or the whole house of Ahab shall perish. (vv. 7a, 8a)

Verses 8b–9 reiterate 1 Kgs 21:21b–22a almost exactly. Verse 10 repeats with minor changes that dogs will eat Jezebel in Jezreel; it adds, however, that “no one shall bury her,” which is the natural conclusion when one considers the dogs consuming her body.

In the verse in 1 Kings 21, YHWH relates through Elijah that Ahab “sold” himself in his episode. It is not just the fact and type of *actus reus* (guilty act) involved in the crime that concerns YHWH, but also Ahab’s *mens rea* (guilty mind) and motivation for the crime. He coveted Naboth’s land; therefore, he stole it from an innocent man, murdering him and his descendants in order to obtain it. The motivation was solely economic, it was to receive דָּבָר property. He also provoked Israel to sin in the process by using his nobles and other individuals to disorder and disrupt the mechanism of justice. The corruption of the legal system is very much a part of the action of דָּבָר. YHWH’s verdict is that Ahab violated numerous legal precepts for economic gain.

In all this wrongdoing, YHWH has been provoked to anger. Many of the Mesopotamian ritual incantations and prayers refer to a given god’s anger toward the petitioner. Sin begets a god’s anger and launches a divine trial

according to the worldview of the ancient Near East. The attendant punishment is always the experience of some sort of disaster. Hence, a god's anger is not simply an emotion resulting from disappointment or frustration, but it is a sign that a crime against the gods has been committed. There is divine emotion in this, but the anger is more than emotion. It is one of the signs that a divine trial will ensue, is in process, or has been completed. The references to both YHWH's anger and the bringing of disaster in the verse is, thus, intentional and tells us that we have a verdict and sentence pronouncement that is issuing forth from the divine courtroom.

The Mesopotamian incantations reflect that the petitioner typically works backwards from the suffering to attempt to understand the underlying sin. Where the commission of sin is known, the suffering is generally attributed to it. In the incident of Naboth's vineyard, no punishment has yet fallen upon Ahab. Ahab has, before Elijah speaks, no indication as to what is about to befall him. Yet, Ahab is fully aware of his crimes; he did them with full criminal intention and the crimes are complete with only the final taking of the vineyard in process. Ahab is, therefore, not surprised when Elijah seeks him out, and Ahab says to him, "Have you found me, O my enemy?" (v. 20a α), and Elijah answers, "I have found you" (v. 20a β). Ahab is both found and found out. He knows he is being sentenced in YHWH's courtroom. Ahab will die, and presumably before he dies, he will be separated from all the men of Israel, meaning that he will cease to rule over his subjects. This final disgrace is the direct result of the abuse of royal authority, wherein he employed the elders and nobles of the region to undermine the very integrity of the justice system. His subject will lose faith in him, as well they should.

The narrator then declares in v. 25:

Indeed, there was no one like Ahab, who sold himself to do what was evil in the sight of YHWH, urged on by his wife Jezebel.

The narrator makes patent with these words that Ahab has been an active participant in the crime whenever he joined the plot. Jezebel encouraged him, but she did not lead him by the nose.

The announcement of the verdict and sentencing does not only involve Ahab; it is also addressed to Jezebel, who seems to have instigated the whole affair, and encompasses their children. 1 Kings 21:23 condemns her for her crimes and, in this instance, YHWH declares that dogs will not only lick up her blood, but will also eat her corpse "within the bounds of Jezreel" as her punishment for her abuse of her power and other criminal activity (cf. 1 Kgs 9:10). YHWH will also destroy Ahab's entire line (1 Kgs 21:21–22a; 2 Kgs 9:7a, 8–9). As

the children of Naboth died, so will the children of Ahab. Dogs will not only lick up their blood, according to 1 Kgs 21:24, the dogs will actually eat them, like Jezebel, if they should die within the city, and the birds will eat them if they should die within the country. This, too, is an ignoble death without burial. The public desecration of Jezebel's and the children's corpses is a punishment that seems to go beyond what Naboth suffered. This, too, then indicates that the sentence is a response to something more than the false suit; rather, it involves the abuse of royal authority as well. There must be a separate punishment for the abuse of royal authority and the perversion of the legal system, and this is it.

Before leaving the announcement of the verdict and sentence, we should return to the time element of the narrative in 1 Kings 21. As indicated above, the punishment is declared while Ahab is on Naboth's land, about to seize it for himself. YHWH immediately and openly confronts the perpetrator via his mouthpiece Elijah, who declares the verdict and sentence. The speed at which YHWH works indicates that he did not need to do any investigation of the matter, and the trial was summary in nature: the facts spoke for themselves, much like in the Mesopotamian incantation texts.

Ahab's Response to His Sentence. Sentencing is not the end of the story in 1 Kings 21. Ahab responds: he grieves and is contrite with respect to his actions:

When Ahab heard those words, he tore his clothes and put sackcloth over his bare flesh; he fasted, lay in the sackcloth, and went about dejectedly. (v. 27)

Here again, we are reminded of the effect of confession in the ritual incantations and in David's confession in 1 Sam 12:13a: confession may bring a reduction in or pardon of the sentence. In both of the biblical cases, YHWH mitigates the offenders' sentence. Verses 28–29 reflect that Ahab and Jezebel receive a stay of execution and will die at a later date; the punishment is to be fundamentally vicarious:

Then the word of YHWH came to Elijah the Tishbite: "Have you seen how Ahab has humbled himself before me? Because he has humbled himself before me, I will not bring the disaster in his days; but in his son's days I will bring the disaster on his house."

Although Jezebel is not mentioned in vv. 28–29, we know Jezebel is spared for some time because we have no report of her death until 2 Kings 9, after Ahab's death and their son, Joram, has taken the throne.

Carrying Through: The Sentence's Execution Beyond 1 Kings 21

The narrative of 1 Kings 21 does not convey any information about the death of Ahab or the execution of the sentence against Jezebel or their children. The actual execution of the sentence pronounced in 1 Kings 21 is not completed until later in the Hebrew Bible, and YHWH has various agents carrying it out over an extended period of time. Ahab dies in 1 Kings 22; Joram, Ahab's royal heir, dies in 2 Kings 9; and Jezebel and the rest of Ahab's line die in 2 Kings 10. We take up Ahab, Joram, Jezebel and the balance of the descendants in this order.

Ahab's death arrives, according to 1 Kgs 22:29–38, shortly after the battle of Qarqar against the Arameans over the city of Ramoth-gilead. He was mortally wounded in his chariot, although v. 40 indicates that “he was laid to rest with his father,” which typically implies a non-violent death.²¹⁴ It is, however, the discussion in the Divine Council ahead of the actual death, rather than its means, that interests me the most. Never do we hear from or about the Divine Council in 1 Kings 21. YHWH's voice alone is heard. It is, consequently, easy to presume that the divine courtroom in which this case was heard contains YHWH as the sole judge. This is, of course, no less of a divine courtroom than one in which the entire Council is empanelled. Nonetheless, it is interesting that when it comes to the execution of the verdict and sentence against Ahab, the Divine Council appears in the narrative.

The context of the scene is that Ahab seeks to go to war with Aram over the city of Ramoth-gilead and asks the King of Judah, Jehoshaphat, to join him in an alliance (vv. 1–4). Jehoshaphat wishes, however, to inquire of YHWH first (v. 5). Ahab assembles approximately 400 prophets who assure him of success (vv. 6, 10–12). Nevertheless, Jehoshaphat wishes to make sure that every single prophet speaks a positive word and asks whether any other prophet is available (v. 7). One, indeed, is, Michaiah, who is summoned (vv. 8–9). After a seemingly false start (vv. 13–16), he speaks a negative word against the war (v. 17), as Ahab predicted (vv. 8, 18). At this point, Michaiah relates a vision that preceded the utterance of his prophetic word. The vision is of YHWH among “all the hosts of heaven” (כל צבא השמים) (v. 19). Although this is not one of the more common Hebrew formulations of the Council,²¹⁵ the group is gathered around YHWH's heavenly throne and speaking about judicial matters. Indeed, they speak about how to proceed in the execution of Ahab.

²¹⁴ See, i.a., G. R. Driver, “Plurima Mortis Imago,” in *Studies and Essays in Honor of Abraham A. Neuman* (ed. M. Ben-Horin, D. Weinryb, and S. Zeitlin; Leiden: Brill, 1962), 140 n. 13; Halpern and Vanderhooft, “Editions of Kings,” 230–31; and W. Thiel, “Ahab,” *ABD* 1:103.

²¹⁵ See n. 60, *supra*.

Michaiah communicates that, in the vision, YHWH seeks a volunteer from members of the Divine Council to entice Ahab into war at Ramoth-gilead so that he might die in battle and not live out his natural life (v. 20a). A spirit came forward with a plan to be a lying spirit in the mouths of all Ahab's prophets (vv. 20b–22a):

And YHWH said, "Who will entice Ahab, so that he may go up and fall at Ramoth-gilead?" Then one said one thing, and another said another, until a spirit came forward and stood before YHWH, saying, "I will entice him." "How?" YHWH asked him. He replied, "I will go out and be a lying spirit in the mouth of all his prophets."

YHWH approves the plan and commissions the spirit, with the words:

You are to entice him, and you shall succeed; go forth and do it. (v. 22b)²¹⁶

Michaiah then states to Ahab, in v. 23, that YHWH has decreed his death here and now:

Indeed, now YHWH has put a lying spirit in the mouth of all these your prophets; YHWH has decreed disaster for you.

Given the fact that this pericope follows 1 Kings 21, it is easy to presume that the two chapters are connected, and the guilty verdict and sentence announced in 1 Kings 21 will now be executed, and Ahab will die. Verses 35 and 37, in fact, report Ahab's death in battle and that he is brought to Samaria for burial. We know, however, that Ahab's death here in 1 Kings 22 is the direct result of his conviction for the murder of Naboth by abuse of royal authority because v. 38a reports that, when Ahab's chariot is washed clean of his blood, "the dogs licked up" the blood.²¹⁷ So ends Ahab's life. His son Ahaziah assumes the throne (vv. 40, 51), but then dies shortly thereafter from a fall from a window (2 Kgs 1:1–2, 17), and Ahaziah's brother Jehoram (or Joram) succeeds him (2 Kgs 1:17; 3:1).

²¹⁶ R. B. Chisholm, Jr. "Does God Deceive?" *BSac* 155 (1998): 12–17. Additionally, according to E. T. Mullen, these words of dispatch are similar to those used to send out messengers in the Ugaritic council myths (*Divine Council*, 206).

²¹⁷ Verse 38b adds: "and the prostitutes washed themselves in it, according to the word of YHWH that he had spoken," which seems to be a gratuitous addition. See Cohn, "Literary Structure," 115.

Surprisingly, Ahaziah's death is not connected to Naboth's vineyard anywhere in the Hebrew Bible, and we do not hear of Naboth's case again until 2 Kings 9—to which we turn.

After Jehu is anointed king and reveals this to his company (2 Kgs 9:1–6, 11), he goes to war against Joram (Jehoram) of Israel, son of Ahab, and King Ahaziah of Judah (v. 21a). They meet on Naboth's land in Jezreel (v. 21b), and Jehu lays down the challenge against Joram citing “the many whoredoms and sorceries of your mother Jezebel” (v. 22). After dispatching Joram in v. 24, Jehu says to his aide:

Lift him out, and throw him on the plot of ground belonging to Naboth the Jezreelite; for remember, when you and I rode side by side behind his father Ahab how YHWH uttered this oracle against him: “For the blood of Naboth and for the blood of his children that I saw yesterday, says YHWH, I swear I will repay you on this very plot of ground.” Now therefore lift him out and throw him on the plot of ground, in accordance with the word of YHWH. (vv. 25–26)

This portion contains a clear reference to Naboth's murder and that of his sons and the relationship of the guilty act to the execution of the judgment herein.

The oracular report imbedded in this section of text—surrounded by an imperfect *inclusio*, each part of which includes “Lift him out and throw him on the plot of ground”—is also not a part of the sentence of 1 Kgs 21:20b–26. The report as told by Jehu seeks to establish that the death of Naboth's children occurred at or very near the time of Naboth's murder, and makes clear that the principle of *lex talionis* is operating in this verdict. It also seeks to establish Jehu as an insider, a fellow hearer of YHWH's verdict and sentence. Nothing in 1 Kings 21 indicates that Ahab had company at the time of Elijah's oracular utterance or that they were all on horseback. The element is also different, though how different depends on whether one takes “yesterday” (אמש) literally as the day before today within the story's timeframe or the general past.²¹⁸ I read it as the general past. Be that as it may, Joram is dying pursuant to the divine judgment that came from YHWH.

Jezebel's sentence is also carried out in 2 Kings 9. Eunuchs, displaying their loyalty to Jehu, throw her down from her high perch that overlooks Jehu's grand entrance (vv. 30–33a). Her blood spatters on the wall and horses, and, shortly thereafter, the dogs consume most of her body (vv. 33b–36). Jehu's final words,

218 J. M. Miller, e.g., takes it to be literal (“Fall of the House of Ahab,” 308).

in vv. 36b–37, demonstrate that, here too, he knows that he has executed the sentence by which YHWH condemned Jezebel for Naboth's death:

This is the word of YHWH, which he spoke by his servant Elijah the Tishbite, "In the territory of Jezreel the dogs shall eat the flesh of Jezebel; the corpse of Jezebel shall be like dung on the field in the territory of Jezreel, so that no one can say, This is Jezebel."

One only wonders whether her remaining body parts were, indeed, spread like fertilizer on Naboth's vineyard with her son.

The rest of Ahab's line, 70 descendants who are residing in Samaria, are massacred in the narrative of 2 Kgs 10:1–11. The leaders of the city kill them at Jehu's behest, decapitate them, and send their heads back to Jehu in Jezreel. The narrator offers no report regarding whether dogs devoured their blood, corpses, or detached heads. Nonetheless, they are destroyed, along with Ahab's allies and officials until Jehu has wiped out all allegiances to Ahab's line (v. 11). Jehu again acknowledges the sentencing of Ahab, conveyed to him through Elijah's cohort, when he says in v. 10:

Know then that there shall fall to the earth nothing of the word of YHWH, which YHWH spoke concerning the house of Ahab; for YHWH has done what he said through his servant Elijah.

So it is that the final destruction of Ahab's and Jezebel's line is visited upon them, and the primary heir, Joram, is killed on the very ground under dispute in the incident: Naboth's vineyard. YHWH's justice is now complete. The prophetic oracles emanating out of his courtroom, YHWH's verdict and sentence against Naboth's murderers, is fulfilled; and YHWH's application of justice in a case of royal abuse of authority is at an end.

Abuse of Authority via a False Suit on Blasphemy in the Book of Job

Finally, we address the relationship between the pericopes concerning Naboth's vineyard and the book of Job in order to give still more clarity to the courtroom behind Jezebel's and Ahab's punishment for abuse of royal authority. Both the book of Job and the Naboth materials in 1–2 Kings deal with a false charge of blasphemy and abuse of authority. Consequently, it is helpful to read them together.

Abuse of Authority in the Book of Job

As I have sought to prove in prior research, the Satan²¹⁹ accuses Job, before YHWH and the Divine Council, of having a blasphemous intention, a situation toward which YHWH acted inappropriately by favoring Job rather than punishing him (Job 1:10).²²⁰ YHWH reads the situation quite differently, believing that Job is a man of outstanding character and has no such criminal intention (1:8; 2:3). YHWH, therefore, thinks that Job is deserving of all the bestowed divine blessings. Nevertheless, a real dispute is put forth in the Divine Council because the Satan uses a common accusation formula that will typically set a formal legal action in motion (1:11; 2:5).²²¹ Job has been accused of having a blasphemous intention that will give rise to blasphemous speech acts if the hedge of blessings that YHWH built around him should be removed. Yet, it is not only Job who stands accused. YHWH is the one who built that hedge in the first instance rather than punishing Job for his blasphemous intention as the Satan thinks was required.²²² Thus, YHWH, to the Satan's mind, has disrupted the moral economy and failed to maintain social justice, much like

219 The title השטן is variously rendered in English translations as *haśśāṭān*, *the Satan*, *Satan*, *the Adversary*, *the Accuser*, *the Prosecutor*, *the Advocate*, *a certain adversary*, or *a certain accuser*. P. L. Day makes well the case that the best English translation is either *the adversary* or *the accuser* (*An Adversary in Heaven: śāṭān in the Hebrew Bible* [HSM 43; Atlanta: Scholars Press, 1988], 1–43). We believe that all the renderings except *Satan*, *the Prosecutor*, and *the Advocate* are acceptable. We prefer *the Satan*, the anglicized version of *haśśāṭān*. Our rendering recognizes that this is a title or role, but one that is used instead of the Satan's actual name, much in the way that Helen Keller called Annie Sullivan *Teacher* or one might address a district attorney as *Mr. Prosecutor*. For the best discussion of the literature regarding the origins of השטן, the role he plays in the Hebrew Bible, and alternatives for the title, see Day, *Adversary in Heaven*.

220 For a full explication of these ideas, see Magdalene, *On the Scales*, chapters 5–10. For a summary of chapters 5–8, see eadem, “Through a Glass Lawyerly,” 123–38. See also my forthcoming *Judging Job: The Reader as Interpreter, Adjudicator, and Theologian* (Critical Studies in the Hebrew Bible; Winona Lake, Ind.: Eisenbrauns).

221 The Satan states in relevant part: “If he does not blaspheme (ברך) you to your face . . .!” (1:11). Again, he states: “If he does not blaspheme (ברך) you to your face . . .!” (2:5). The Satan has accused Job of a crime using the common abbreviated oath formula found in the Neo-Babylonian and earlier periods of ancient Near Eastern legal history: “If he has not done x [the content of the accusation] . . .” On the oath formula, see Magdalene, *On the Scales*, 68–69, 106.

222 P. L. Day argues that the primary target of the Satan's accusations is God, who has offered Job unfair “divine patronage” (*An Adversary in Heaven* 76, 80–81). Day states further: “I am suggesting that Yahweh is on trial, for his conduct of world order, from the very beginning

in Psalm 82, wherein YHWH accuses the members of the Divine Council of failing to maintain social justice.²²³

It must be YHWH's view that the charges against Job and him are patently false. Yet, a defendant is in no position simply to claim his innocence and walk away from a properly filed criminal charge.²²⁴ Rather, he must stand trial. Furthermore, YHWH cannot let Job off the hook legally in this instance without proving the Satan correct on the more important pending charge: that is, he continues to favor Job wrongly.²²⁵ As a result, then, a trial, with the requi-

[of the dispute]" (81; cf. 80). See also E. M. Good, *In Turns of Tempest: A Reading of Job* (Stanford: Stanford University Press, 1990), 195, 411 n. 17.

223 In bringing that action against God, the Satan has to insist that God is not above the law. God must follow the principles of retributive justice, and, if he should not, he is subject to suit.

224 Some interpreters have argued that God is non-moral or that humans cannot fathom the morality of God (see, e.g., C. Newsom, *The Book of Job: A Contest of Moral Imagination* [Oxford: Oxford University Press, 2003], 253); thus, it would appear that our human conception of law or ethics cannot be used to measure God. I disagree, maintaining, instead, that for God to be a god of justice, God cannot be above his own law. Thus, he must, and does, submit to this trial and investigation like any defendant. In this, he cannot interfere with the investigation or suit in any way. His interference must be quite minimal. God only asks that Job's health and life be spared (1:12; 2:6). The former request is, of course, ignored in chapter 2; and the latter request simply must be respected for the investigation to be an investigation rather than an illegal execution of the judgment before a proper investigation and conviction is complete.

225 In Job's case, God appears far more reticent in 1:12 and 2:6 than he does in 1 Kgs 22:22b. God does not say the commanding "go forth and do it," typically used to send out messengers in the Ugaritic council myths (Mullen, *Divine Council*, 206); rather, he offers, after the first accusation, the more reserved "All that is his is in your hand; only you should not stretch your hand against his person" (1:12). He replies similarly after the second accusation: "He is in your hand; only protect his life" (2:6). It appears that God is trying to put the brakes on this investigation to whatever extent possible. Given that the Satan has invited God to act in the first place (1:11 and 2:5), God's response seems especially reserved. He is not an enthusiastic supporter of it. Furthermore, in 1 Kgs 22:23, the prophet, Michaiah, who is the narrator of the scene in the Divine Council, reports that YHWH is the primary actor in carrying out the plot: "So, indeed, YHWH put a lying spirit in the mouth of all your prophets; for YHWH has decreed disaster upon you." In Job 2:7, however, the narrator reports that the Satan is the primary actor in carrying out the investigation: "So, the Satan departed from the presence of YHWH and afflicted Job with terrible sores from the sole of his foot to the top of his head." YHWH is not an eager member of the investigating team. He only participates because the law demands compliance from all those connected to a trial.

site investigation, must ensue to resolve the dispute.²²⁶ From YHWH's point of view, this is a false suit but it must play out through a thorough investigation of Job.

Job and his friends have somewhat different points of view regarding the matter because none of them knows of the events that actually transpired in the Council as do we readers. All they know is that Job is suffering. Hence, pursuant to the worldview of the ancient Near East in regard to the punitive nature of suffering, either Job is on trial (according to Job) or he has been put on trial (according to his friends) for some serious wrongdoing.²²⁷ This, of course, is true. What the humans do not know is just who brought this suit. Job and his friends all believe that God initiated the trial. They are ignorant of the Satan's role in the matter.

Job's friends working backward from the fact of Job's intense suffering believe that surely he has done some wrong and been convicted summarily by God (e.g., 5:4; 8:3; cf. 36:21 [Elihu's words]). They, therefore, advise him repeatedly to make confession, expiate the offence, and seek pardon (e.g., 8:5; 11:13–20; 22:21–28).²²⁸ Job, on the other hand, will have none of this because he, like God (and the narrator and Job's wife), believes that he is entirely innocent.²²⁹ This is the primary struggle between the humans in the book.

From Job's point of view, this is a false suit brought by God, who ought to know better. God is violating the very principles of justice that he is supposed to be upholding as the court of final recourse. Instead of God serving as the

226 With the start of the trial, an investigation of Job and God must ensue, as is consistent with ancient Near Eastern legal procedure. See, e.g., Deut 8:2–3; Judg 2:22–3:4; Isa 48:10; Jer 6:22–30; 9:1–11; cf. Jer 20:2; 37:15.

227 No other mention is made of other possible sources of the suffering such as physical causes or witchcraft; it, therefore, can only be the result of a divine trial.

228 J. Milgrom notes a connection between confession and the reduction of divine punishment (*Cult and Conscience*, 117–19; and *Leviticus* [3 vols.; AB 3–3B; New York: Doubleday, 1991, 2000], 1:301). He rightly observes that confession is never required of inadvertent sins; expiation alone is sufficient to ward off any difficulties with the deity (see, e.g., Lev 4:1–35; 5:14–15; Num 15:22–29). Confession is necessary only in cases of deliberate sins (see, e.g., Lev 5:1–4; Num 5:6–7).

229 Mrs. Job is the first human who identifies what is at stake—blasphemy: “You must still hold on to your integrity! Blaspheme (בָּרַךְ) God and die!” (2:9). Mrs. Job is not asking a question but, rather, making a statement. As E. W. Good makes plain, there is no interrogative *he* in 2:9, although Good agrees with most other scholars that “this statement has the feel of a question” (*Turns of Tempest*, 52). I disagree with this assertion, as does T. Linafelt in “The Undecidability of בָּרַךְ in the Prologue to Job and Beyond,” *BibInt* 4 (1996): 167. On Job's wife's role in this case, see F. R. Magdalene, “Job's Wife as Hero: A Feminist-Forensic Reading of the Book of Job,” *BibInt* 14 (2006): 209–58.

final defender of social justice, he has become the greatest perpetrator against it. He is the very one whom Job believes is abusing his power. He is the corrupt judge. He is the one bribing witnesses. He is the one who has failed to protect the orphan and widow and supply the stranger. He is the one who created and maintains a corrupt justice system. Job believes that the law ought to apply equally to God.²³⁰ Thus, the problem of abuse of authority is at the heart of Job's claim against God. Yet, who can hear his claim? Job, comprehending that God is the ultimate king and judge of the universe, frets no less than four times that there is no one who can hear his claim, in 9:19, 33–35; 10:5–7, and 31:35a. It should be noted that the anxiety expressed in 10:5–7 is just one verse removed from his strongest accusation against God. Eliphaz also mocks that this is true (5:1).

All the while Job defends against the original lawsuit, as he must.²³¹ He also counterclaims against God,²³² accusing him of abusing his royal and judicial authority in bringing a false suit, not maintaining justice (thereby agreeing inadvertently with the Satan but on different grounds), and failing to create a cosmos that could sustain justice.²³³ The language of accusation is patent in 13:3, 6; and 23:4, the last of which is given below:

I will present (ערד) my case (משפט) before him
and fill my mouth with accusations (תוכחת).²³⁴

That the accusation is abuse of authority is made manifest in 10:2–3.

230 F. Stier says of this: "Das Recht ist stärker als das 'Recht des Stärkeren'. Das letztere hat Ijjob erfahren. Der Versuch seiner Freunde, ihm diese Erfahrung als Irrtum auszureden, ihm weiszumachen, daß Gott gerechtes Gericht, nicht Gewalt an ihm übe, ist gescheitert. Der 'Reinigungseid', die konkrete Entfaltung des 'tam 'anl', [9:21], setzt die Überzeugung voraus, daß das Rechtsein des Menschen kraft des status innocentiae im ethischen wie forensischen Sinne ein auch für Gott verbindliches Recht schaffe, an das Gott gehalten sei, und daß er, sich nicht daran haltend, im Namen des Rechts zur Verantwortung und Wiedergutmachung des Unrechts gefordert werden könne" (*Das Buch Ijjob, hebräisch und deutsch* [Munich: Kosel, 1954], 235).

231 Job 6:8–10; 9:14–15a, 20–21a, 28–29a, 32; 12:4; 13:16, 18, 22a; 16:17a; 23:7, 10–12; 27:3–4, 6; 29:12–17; 30:24–25; 31:1–34, 38–40a-b; cf. 6:29; 12:4.

232 Job 7:11; 9:2–4; 19:7, 27–29a; 10:1–3; 12:4; 13:3–6, 15, 22; 21:4; 23:2–4; 30:20; cf. 4:17–19; 33:13–14; 35:14; 36:2–4; 40:2, 8.

233 I translate the perplexing 13:15: "Though he might slay me, and I should have no hope, still, I will accuse (יכח) his conduct (ערד) to his face."

234 Cf. Gemser, "Rib-Pattern," 123.

Let me say to God, “Do not condemn (רשע) me;
 make known to me why you bring suit (ריב) against me.
 Does it seem good to you to oppress by abuse of authority (עשק),
 that you reject the work of your hands,
 but the designs of the wicked you favor?

Both the claim and counterclaim are referenced in this set of verses, and the counterclaim is an עשק-claim.

This is not the only use of the vocabulary of abuse of authority in the book. Rather, the language of abuse is found throughout the book. In 6:8–9, Job utters words of desperation in response to his pain, saying:

Would that my request find fulfillment,
 that God grant my desire,
 that God would determine to crush (דכא) me,
 that he would let loose his hand and ruin (בצע) me.

In Chapter 19, when Job chastises his friends for the way they are treating him and requests that they assist him in his claims against God, he asks:

How long will you grieve my soul,
 and crush (דכא) me with arguments (מלה).

Job complains that God does not punish the wicked in 24:1–12. Twice, Job uses גזל to demonstrate that the wicked abuse the poor:

They remove boundary stones.
 They seize flocks abusively (גזל) and pasture them . . .
 They snatch (גזל) the orphan from the breast,
 and distrain (חבל) upon the poor. (24:2, 9)²³⁵

God’s failure to confront this wrong constitutes, from Job’s perspective, another instance of abuse of authority.

Others use the language of abuse of authority, as well. For example, in chastising Job, Eliphaz proclaims that the children of the fool cannot be successful and that his sons “are defeated (דכא) in the gate with no one to rescue them”

²³⁵ Westbrook points out the significance of this verse for abuse of authority (*Studies*, 36). I follow his translation.

(5:3b–4, quote at v. 4b). In Chapter 20, Zophar defends God, using both גִּזַּל and רָצַץ to indicate that the wicked will not ultimately prosper:

Because they legally defeated (רָצַץ) and disregarded the poor,
 [because] they have gained through abuse of authority (גִּזַּל) a house
 they did not build,
 they knew no quiet in their bellies,
 in their greed, they let nothing escape.
 There was nothing left after they had eaten;
 therefore, their prosperity will not endure. (20:19–21)

Zophar employs this vocabulary intentionally to transfer liability for suffering from God to the wicked. Finally, Bildad plays with alternative meanings of גִּזַּל when he asserts that God will bring judgment to the wicked:

As drought and heat rob (גִּזַּל) snow waters,
 so Sheol, those who have sinned (חַטָּא). (24:19)²³⁶

All together the characters use the root עִשָּׂק once in 10:3; גִּזַּל three times in 20:19; 24:2, 9 (cf. 24:19), דָּכָא three times in 6:9; 19:2; 22:9 (cf. 4:19; 5:4; 34:25), רָצַץ once in 20:19, and בָּצַע once in 6:9 (cf. 22:3; 27:8), all in the sense of abusing one's authority. This extensive use of the vocabulary of abuse of authority supports the notion that Job counter-sues God on these grounds.

The threat of the counterclaim is the primary means by which Job seeks to force the case, via a legal demand (7:16c), into settlement negotiations.²³⁷ He is apparently successful as Job and his friends enter long settlement negotiations to bring this matter to a close, with the friends arguing for Job to surrender the case while Job is demanding that God give him justice on his claim because there is no judge higher than God to hear the matter out.²³⁸ Finally,

²³⁶ I attribute 24:13–25 to Bildad, not Job.

²³⁷ Only in 9:15b and 23:3–7 does Job become completely transparent in his settlement efforts. In the ancient world, the parties to a dispute could settle at any time during the course of litigation, just as is true today. The existence of such demands in ancient Israel is implied in Judg 20:22. Additionally, an implied demand for a settlement of the claim exists when Abraham lodges an accusation (יָכַח) against Abimelech about his servants' improper taking (גִּזַּל) of Abraham's well (Gen 21:25–27). Abimelech responds that he had no knowledge of this. As a result, Abraham and Abimelech enter into a settlement covenant.

²³⁸ Statements made within the confines of settlement negotiations (whether pre- or mid-trial) seek to achieve four fundamental goals: (1) they typically disclose one's coming trial

Job offers, on the defensive side of his case, an oath of innocence in chapter 31. Significantly, the oath reverses aspects of the Šurpu Incantations because, in it, Job lists all the wrongs he did *not* do (31:1–34, 38–40a–b). Moreover, in the latter part of his oath, he focuses on his maintenance of social justice (31:13–34, 38–40a–b). In certain senses, then, he mimics the unique aspect of the DINGIR.ŠĀ.DIB.BA Incantations by recounting in this way all the good deeds he has done. The oath is important for another reason: it does not dispose of the case, which is surprising given most of ancient Near Eastern legal history. Job closes his extensive remarks at its end (31:40c), only speaking briefly to tell God that he will not speak again (40:3–5) and to surrender the case (42:2–6). In spite of this fact, Elihu and God both add their remarks to the case. The oath should end the matter—unless the author was cognizant of the turn toward rational evidence in the Neo-Babylonian and Achaemenid empires, which did not rely on the oath or ordeal in favor of requiring a minimum of two accusers or witnesses against an individual for conviction.²³⁹

Elihu, therefore, plays a key role in the book because he stands as a second accuser with the Satan by asserting that Job, indeed, blasphemed (spoken fool-

strategy and the testimony that one will offer at trial; (2) they assess the relative strengths and weaknesses of each party's case; (3) they advocate for the rightness of one's cause; and (4) they attempt to resolve the matter. These attributes are present in Job's statements. Job informs the other characters about his intended trial strategy: to defend against the original charge and to file a counterclaim. He discloses his coming testimony throughout his speeches. He assesses the relative merits of both sides of the dispute by reviewing all the assets and liabilities of his case. His bravado and anxiety are not simple expressions of his feelings; they disclose his position relative to God's. Job repeatedly claims that his cause is just. Finally, Job seeks reconciliation with God as seen in his statements above. Thus, Job's speeches have a testimonial character and are marked by the verbal forms of testimony, while not seeming quite like one would expect testimony proper to sound. The three friends and God are similarly giving settlement statements that meet the above four requirements. Their statements represent their legal positions. During their speeches, each character takes up his coming role at trial and verbalizes his future testimony. Each seeks to assess the relative strengths and weaknesses of the parties' cases. Each advocates for the rightness of his cause. Each one attempts to resolve the matter in his own way. The friends argue, in contrast to Job, that settlement lies for Job in following the instructions of ritual incantations, but Job will have none of it.

239 On the nature of the dispositive oath and the move toward rational evidence, see F. R. Magdalene, "Who is Job's Redeemer? Job 19:25 in Light of Neo-Babylonian Law," *ZABR* 10 (2004): 304–9; B. Wells, *The Law of Testimony in the Pentateuchal Codes* (BZAR 4; Wiesbaden: Harrassowitz, 2004), 148–75; and idem, F. R. Magdalene, and C. Wunsch, "The Assertory Oath in Neo-Babylonian and Persian Period Administrative Texts," *RIDA* 57 (2010): 193–209.

ishness: אֵל) God during his speeches (34:7–9; 36:17–21). Job, unfortunately, despite his best efforts to get his friends to turn and side with him against God, is not successful (6:29; 19:1–22); he has no second accuser.²⁴⁰ He, therefore, gives up on the lawsuit (42:2–6).

With Job having given up the case without having blasphemed—no matter what Elihu thought—the Satan lost in the Divine Council, making YHWH free to settle the affair with Job in the epilogue. He does so by restoring him to his prior position and giving him double his property for his trouble consistent with private settlements of theft claims in the ancient Near East (42:10).²⁴¹

Comparing Naboth's and Job's Situations

With this very brief review of the Joban events, we can now observe some of the intersections between Naboth's and Job's stories. First, both cases involve a trial on a charge of blasphemy. Jezebel initiates it against Naboth by using her unscrupulous nobles and their two scoundrels. The Satan initiates a trial against Job for possessing a blasphemous intention, which turns out to be false. It may be that the Satan always knew that the suit was false and was motivated by a desire to unseat YHWH as the head of the Council.²⁴² He, too, then is a scoundrel by misusing the divine legal system.

Second, both Job's and Naboth's cases involve an abuse of authority or a charge thereon. Jezebel and Ahab participate in a scheme to bring the false suit and stage the testimony in order to obtain Naboth's vineyard. Because conviction on such a charge demands the death penalty for the perpetrator and his line, the vineyard will devolve to the king on conviction and execution. The king and queen, therefore, abuse their royal authority in order to murder Naboth indirectly and claim his vineyard without anyone—or at least most—being the wiser. The Satan may have brought a false suit against Job and God in order to gain possession of the divine crown, that is, leadership of the Council. If this should be the case, the Satan would be abusing his authority in his role as YHWH's King's Eye²⁴³ in order to gain advantage that was not his to be had;

240 See further Magdalene, "Who is Job's Redeemer?" 310–15.

241 See further Magdalene, *On the Scales*, 92–94, 259–62.

242 J. Lévêque suggests that the Satan seeks to humiliate God through his questioning of God's confidence in Job (*Job et son Dieu, Essai d'Exégèse et de Théologie Biblique* [2 vols.; Etudes Bibliques; Paris: Gabalda, 1970], 1:185, 189).

243 Here, the Satan serves much like the ancient Near Eastern "Eye of the King." A. L. Oppenheim makes an extremely good case that the figure of the Satan has important points of contact with such an office in the ancient Near East ("The Eyes of the Lord," *JAOS* 88 [1968]: 173–77). For more on the Persian office of the Eye of the King, see C. Tuplin, "The Administration of the Achaemenid Empire," in *Coinage and Administration in the Athe-*

he is using Job as a trap for YHWH. But whether or not that is the case, Job brings a counterclaim of abuse of royal and judicial authority against God for instituting a trial that Job believed was false. He expects YHWH to act in a just manner toward him and is bewildered with YHWH's seeming failure to do so. Thus, Job is forced to bring his counterclaim to seek the justice he deserves and anticipates.

Job's story is replete with Hebrew terms related to abuse of authority, while we see only one such term used in Naboth's story. Nonetheless, seeing how that rich vocabulary is used within the book of Job helps us to perceive exactly what abuse of authority is as a legal claim in the context of a false suit on a charge of blasphemy. It reinforces all that we know about Naboth's case.

Finally, we should be able to perceive that, in both instances, the divine courtroom was operating. In Job's case, the narrator makes us readers witnesses to the initiation of the proceedings in the heavenly realm, as well as the court's investigation of Job's legal intention. We know what is actually happening. In fact, we gain information in the prologue that the characters in the story never possess. We learn that YHWH is not entirely passive in the Council. He speaks up for Job repeatedly. Yet, once the trial has begun, his hands are tied for some time. Due to the Satan's claim and Job's counterclaim, God must respond to the allegations, and he does so in regard to two of Job's three counts, that is, failing to maintain social justice and failing to create a cosmos that can support social justice. He cannot, however, respond directly to the false suit claim because he agrees with Job and to do so would interfere in the investigation, thereby giving the Satan the win as against God. God's tone is blustery, even snide, and he demands that Job confess (38:3; 40:7); but that is only to show the Satan and the Divine Council that he is not favoring Job. Only once Job surrenders the suit without having blasphemed God can God act. Hence, we observe YHWH springing into action in the epilogue to set things right. This is a god of justice. In Naboth's case, we readers do not observe directly the legal machinations in heaven regarding the lawsuit for quite some time. We

nian and Persian Empires: The Ninth Oxford Symposium on Coinage and Monetary History (ed. I. Carradice; Biblical Archaeology Review International Series 343; Oxford: B.A.R., 1987), 120. In the book of Job, the Satan goes to and fro, searching out the just and unjust and has the power to bring charges against an alleged perpetrator. YHWH inquires of the Satan where he has been (1:7a). The Satan answers that he has been roving the earth (1:7b). The root שׁוּט, "to rove," includes the sense of searching for the just and the unjust. See Jer 5:1; cf. 2 Chr 16:9a; Zech 4:10b. While there is much discussion in the literature about just how extensive the connections between שׁוּט and שָׁטָן are, I believe that they represent no more than a wordplay (M. Weiss, *The Story of Job's Beginning: Job 1–2, A Literary Analysis* [Jerusalem: Magnes, 1983], 44).

have no idea that it is working until we learn of YHWH's verdict and sentence through Elijah as he stands in Naboth's vineyard. It is not until 1 Kings 22 that we understand that YHWH is not acting entirely alone. Once again the Divine Council is at work; but this time we readers are not made aware of the action until Michaiah narrates his vision to Ahab, and we happen to overhear it. This comes late in Naboth's story: when the time comes to execute Ahab, just one of the several sentences. Yet, due to the salient parallels between Naboth's and Job's stories, I maintain that the divine courtroom is hard at work throughout Naboth's story even though YHWH's courtroom is offstage for most of it. It is fully operational and equally as busy in Naboth's case as in Job's.

Conclusion

In the events involving Naboth and his vineyard in 1 Kgs 21:1–22:40 and 2 Kgs 9:1–10:11, Queen Jezebel instigates a false suit, through the accusation of two scoundrels, against Naboth on a charge of blasphemy in order to secure his death and that of his line. This will allow King Ahab to obtain Naboth's vineyard, which Ahab covets. After Naboth's conviction, he and his sons were executed in accordance with the rule that both the blasphemer and his line are subject to capital punishment. The family land, which Naboth had refused to sell to Ahab, then devolved to him, as highest representative of state authority, under the usual rule of criminal forfeiture. Jezebel's and Ahab's actions against Naboth were an abuse of their royal authority and a crime against the integrity of the judicial system. They also led their people astray instead of effectuating justice. Standing behind the prophetic words of Elijah in the story regarding the fall of the house of Ahab is a divine trial of Jezebel and Ahab on these crimes, as well as their conviction on the charges. Ultimately, Ahab repents, and he and Jezebel live a while longer; but, in the end, they both die a violent death and their line is extinguished. All the deaths are the execution of the sentence issuing forth from the divine courtroom, of which we get just a quick glance in 1 Kings 22. It is true that the divine courtroom sits in the background for a very long time; nevertheless, Jezebel's and Ahab's punishments stem from the divine legal realm. Elijah speaks for the court, and the Divine Council begins to exact justice from Ahab. Other deaths follow.

In order to understand fully the import of Elijah's and Elisha's words, it is helpful to read 1 Kings 21–22 and 2 Kings 9–10 in light of the book of Job, wherein a similar set of circumstances exists and the Council is directly before the reader. In doing so, we can comprehend that Israel was very similar to its neighbors in its view of what proper justice demanded. Just as the greater ancient Near

East had admonitions against royals and their officials falling into the trap of abuse of authority, so had Israel. The fact that the king was the primary human maintainer of justice, in all its facets, made him a critical protective piece of the entire divine legal system. YHWH's courtroom, as the highest court of the land and, therefore, the court of last resort, was where the buck in dispensing justice in cases of abuse of authority always finally stopped. When kings (or divine beings) abuse their authority, no human court can possibly intervene to set matters right. The divine courtroom must, therefore, be the court to try the case. When cases of abuse of authority come to YHWH's courtroom, he deals harshly with them. He is so just, in the worldview of the Hebrew Bible, that even where a single human believes that YHWH, himself, has abused his royal and judicial authority—even if mistakenly—YHWH hears and processes the claim. Because no human court could discern or resolve what happened to Naboth due to both the secrecy behind the treachery involved and the fact that it was the king and queen, themselves, who were the perpetrators in this case, only YHWH's court could bring Ahab and Jezebel to justice, and it did. Naboth's victimization at royal hands did not go unnoticed; YHWH saw to it that his murder and the murder of his family were avenged and expiated by the death of the principals and their family.

The Invention of the Divine Courtroom in the Book of Job

Carol A. Newsom*

Although ancient Israelite prophetic poetry sometimes envisioned a legal trial between God and Israel (the “covenant lawsuit”; cf. Isa 3:13–14; Mic 6:1–8), or envisioned God as arguing a case on behalf of the people (Jer 50:34), legal language traditionally played little role in personal piety. Occasionally, a psalmist might speak of God’s entering into judgment with him (Ps 143:2) or of God’s pleading his case (Ps 119:154). In all of these instances, however, the people are represented as the accused, whether accused by God or by some third party. This is not to say that psalmists do not raise complaints against God. To the contrary, they can be quite eloquent both speaking in the voice of the nation (as in Psalm 44) and individually (as in Psalm 22:2–3; 43:2; etc.) in complaining about God’s dereliction of duty. For all of this plain speaking, however, they never employ imagery that would represent the people or the psalmist as a plaintiff in a trial with God. Either that was a repugnant, or more likely, simply an unthinkable idea. Outside of the book of Job there is only one place where such an idea is entertained—Jeremiah 12:1. In that verse Jeremiah unmistakably uses legal terminology—*משפטים*, *ריב*, *צדיק*—and posits himself as plaintiff and God as the accused. But the trope is little more than a rhetorical flourish, albeit a bold one, for Jeremiah begins his words with an indication of the absurdity of such a conceit: “You will win, O Lord, if I make claim against You, yet I shall present charges against You” (NJPS; translations are my own unless otherwise noted). But Jeremiah drops the trope as quickly as he has introduced it. It does not function to shape his thinking in any larger way.

Only in the book of Job is the metaphor for a trial with God developed in such a fashion that it becomes a potential model for organizing a person’s relationship with God as an alternative to the models of psalmic and sapiential piety.¹ Even in Job the notion of a trial with God emerges in Job’s dispute with the friends simply as a joke, a bitter parodic pun on something that Eliphaz

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1 This essay draws on the analysis of legal language that I developed in *The Book of Job: A Contest of Moral Imaginations* (New York: Oxford University Press, 2003).

has previously said. Initially, it has no more force than Jeremiah's sarcastic jab. But it soon becomes much more than this, though the legal metaphor never establishes itself as Job's only means of thinking about his situation or exploring his relationship with the deity. Instead, in Job's speeches legal language repeatedly flares and fades. But the frequency with which Job returns to it, and its strong presence in his final extended speech in chapter 31, underscores its significance in the book as a whole. Yet in the end, the book turns away from the legal metaphor, though whether that move should be taken as a firm rejection of the legal metaphor or simply a recognition of its inherent limitations is unclear. In either case much of the intellectual excitement of the book of Job comes from watching the process by which a previously unthinkable idea comes into being, is explored and tested, distanced and brought near, as the possibility of a radically different religious imagination takes shape before the reader. Even if the climax of the book asks one to renounce the efficacy of the legal model for understanding human/divine relations, the world of intellectual possibilities is forever changed by the work that Job has done. In what follows I wish to explore the nature and processes of the imagination at work as they are revealed in how the author of Job depicts Job's invention of a new way of exploring the relation between the human and the divine.

One cannot understand the emergence of the legal metaphor in Job's speeches without understanding what has happened to Job's relationship to the rhetorical world that had previously shaped his understanding. This rhetorical world is articulated in the dialogues by Job's friends. As a species of practical wisdom, what they say deserves far more respect than it is often accorded. In his first speech in chapter 3 Job had attempted to articulate the magnitude of his anguish and concluded his speech by identifying that which he had dreaded and which had now come upon him as "turmoil" (רָגַז). The friends attempt to respond to Job's identification of his distress by offering the cultural resources designed to contain the sense of turmoil and restore meaning and agency to Job's world. They offer him a variety of narrative schemas that place his sufferings within larger meaningful plots of survival and hope (5:8–16, 17–26; 8:8–22) and narrative schemas that reassert the ultimate outworking of justice (4:7, 8–11; 8:4–7), even as they also attempt to normalize mortality itself (4:12–21). Most importantly, they urge Job to pray to the God who transforms situations (5:8–16) and who is gracious to those who seek mercy (8:5–6). They offer him a way in which he can become an agent in the transformation of his situation. Restoration of meaningfulness and the re-establishment of a sense of agency are powerful tools of resistance against debilitating emotional turmoil. I am not particularly interested in questioning the theological adequacy of the friends' consolatory words or noting their conceptual inconsistency. What they provide is an inventory of the rhetoric of coping, which had apparently worked

quite well in the cultures of antiquity. Indeed, if one compares the repertoire of the friends' advice to that preserved in the extensive Greco-Roman consolatory literature, one finds significant overlap.²

Job, of course, is beyond the reach of such traditional tools for coping, as his response to Eliphaz in chaps. 6–7 demonstrates. Many of the assumptions on which the friends base their traditional wisdom—a desire to live and be restored, a sense of temporality that envisions a meaningful future, sufficient psychic space to organize one's thoughts and plans—these no longer have purchase for Job's sense of reality. Instead, his sense of God's invasive and aggressive presence displaces all other experiences (7:11–20). Consequently, Job literally can no longer speak the language he used to speak.³ He cannot reorient himself to the narratives he himself used to utter (4:3–4). He cannot pray in the traditional fashion. He has no constructive language to use at all. This is a critical point. Job's speech in chapters 6 and 7 is almost wholly negative, undermining Eliphaz's attempts to provide him with narrative and agency and a temporality based upon hope in the future. Instead, Job uses imagery that narrows down temporal experience to an excruciating present from which the only escape is death (6:8–13; 7:7–10, 20–21).

When the traditional languages of coping are no longer available, what language can one speak? One possible response, of course, is simply silence—the apathy of despair. But if Job's friends give him any gift through their well-intentioned but misfiring responses, it is to make him angry. And anger leads to aggression, and aggression leads to transgression. It is precisely as Job aggressively transgresses the language that Eliphaz had spoken that the legal metaphor surprisingly, almost accidentally, emerges into view. At the beginning of chapter 9, Job brushes past Bildad's speech in chapter 8 to take up a statement Eliphaz had made. In comparing humans to God Eliphaz had observed that “a person cannot be righteous (צַדִּיק) before God” (4:17). From Eliphaz's point of view that is a simple truism. Eliphaz knows what he means and thinks he has simply said what he means. “Nobody can be righteous before God.” This is part of his argument for naturalizing suffering and mortality. What Job does with

2 See my discussion in “The Consolations of God: Assessing Job's Friends Across a Cultural Abyss,” in *Reading from Right to Left: Essays on the Hebrew Bible in Honour of David J. A. Clines* (ed. J. C. Exum and H. G. M. Williamson; JSOTSup 373; Sheffield: Sheffield Academic Press, 2003), 347–58.

3 My understanding of Job's relation to language is indebted to the perceptive essays about language and culture by J. B. White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984).

Eliphaz's statement, however, makes use of what the Russian literary theorist Mikhail Bakhtin calls the inner dialogism of the word.⁴ Words have meaning as they are used in contexts. And if the same word is used in different contexts with different meanings, then a clever rhetorician may exploit the space between those two meanings, those two contexts. Eliphaz was simply using the word צִדֵּק in its religio-moral sense. But the verb צִדֵּק has another context of use—it also functions in legal discourse to mean “in the right,” declared “innocent” in a court of law.⁵ The brilliance of what Job does is to play with the two contexts of the word. At the beginning of Job 9 Job declares himself in agreement with Eliphaz: “Truly, I know that this is so; how could a person be צִדֵּק with God?” (9:2). But the feigned agreement quickly dissolves into subversive disagreement, as Job makes it clear that he is using the word in its legal context and exploring what it would mean to be engaged in a trial with God. For some reason Job does not just dismantle Eliphaz's statement and move on. He prolongs the imaginary notion of being in a trial with God (vv. 14–24). Job's point is that disproportion in power renders the concept of justice and, therefore, of being “in the right,” meaningless. Power always wins. In what is perhaps the most disturbing image, Job envisions his own witness as being turned against himself. “Though I were innocent, my mouth would condemn me; though I were blameless, He would prove me crooked” (v. 20; NJPS).

There is more to Job's rhetorical play, however, than just his exploitation of different contextual uses of the word צִדֵּק. In the following verses Job engages in what Bakhtin calls the “dialogization of discourses.” In every culture people use a number of different social discourses, characterized by linguistic, semantic, and stylistic differences. Ordinarily, these different discourses exist side by side but do not interact. Each has its context and people move from one to another as the context demands. Bakhtin's illustration was the illiterate peasant who “prayed to God in one language . . . , sang songs in another, spoke to his family in a third, and when he began to dictate petitions to the local authorities through a scribe, he tried speaking yet a fourth language (the official-literate language . . .).”⁶ Each of these ways of speaking has distinct socio-dialectological markers. Each has its own implicit ideological orientation and set of values. We tend not to notice these distinctions because we compartmentalize the discourses. But if something triggers a “critical inter-animation” between them, then comes the recognition “that the ideological systems and approaches to

4 M. Bakhtin, *The Dialogic Imagination: Four Essays* (ed. M. Holquist; trans. C. Emerson and M. Holquist; Austin: University of Texas Press, 1990), 269–82.

5 HALOT, 1003–4.

6 Bakhtin, *Dialogic Imagination*, 295–96.

the world that were indissolubly connected with the languages contradicted each other and in no way could live in peace and quiet with one another,”⁷ thus requiring a person to evaluate and to choose an orientation toward these discursive constructions of reality.

Job stages just such a “critical inter-animation” by not effecting a clean transition from the moral-religious discourse of Eliphaz to a legal discourse. Instead, he leaves both in play. Eliphaz had favored the language of religious praise. So, in developing his claim that “one cannot be צדק before God,” Job describes God as “wise of mind” and “powerful in strength” (9:4a), terms at home in religious praise. He further supports his argument by reciting a hymnic fragment praising the power of God (vv. 5–10), culminating in a line identical to one already used by Eliphaz in his praise of God (9:10 = 5:9). While the imagery of the doxology is noticeably violent, all of the images are quite at home in “straight” praise of God. Whenever God fights against enemies, mythic or human, the violent effects of the struggle are experienced by the whole cosmos (e.g., Pss 18:8–16; 97:1–5; 114:1–8; Nah 1:1–6; Hab 3:3–13; Ezek 32:7–8). Violence also characterizes God as victor over chaos (Ps 29), as champion of Israel against its foes (Nah 1:1–6; Hab 3:3–13), and as deliverer of the individual (Ps 18). Contextualized in the discourse of praise, this violence is not just unobjectionable but indeed valorized. But when Job concludes this section with the remark, “How then could I answer him or choose my words with him? Even if I am innocent (צדקתי), I cannot answer” (9:14–15a), he enables the discourse of legal contest to confront the ideological assumptions of hymnic praise. The vast difference between God and humans, emphasized by Eliphaz and praised in the divine warrior hymns, appears as morally disturbing when reframed in a forensic context.

So far, even though his rhetoric is more emotionally intense and more aggressive, Job has said nothing fundamentally different than did Jeremiah. God is more powerful than humans and so one cannot expect a just adjudication if one “goes to trial” with God. One could imagine the trope, having served its purpose, being abandoned, as Jeremiah abandons it. But even as the prolongation of Job’s horrific depiction of a judicial encounter with God appears simply to be screwing Job further down into despair, the chapter takes an odd turn at the very end. Job has just been reiterating why justice with God is impossible: they are not equals. “He is not a human, like me, that I could answer him, that we could go to law together. There is no arbiter between us to put a hand upon each of us” (9:32–33; NJPS). The very last verse, however, envisions a different

7 Ibid., 296.

possible scenario: “If he would take his rod from me and not let terror of him frighten me, then I could speak and not fear him” (vv. 34–35a; NJPS).

What are the mechanisms that allow such a hypothetical possibility to emerge? Here one sees the dialogical imagination at work in ways that Job himself apparently did not originally intend. Job had introduced the legal framework simply as a means of undercutting Eliphaz’s complacent rhetoric, undermining in particular the notion of God’s power as benign and salvific, by placing it in a hypothetical forensic context. But Israelite legal discourse was not oblivious to the issue of discrepancies of power. Even between humans this is often a problem, and the laws that the community understood as commanded by God made it clear that in the court of law, differences in social, economic, or political power were to be set aside. “You shall not deflect judgment; you shall not show favoritism; you shall not take a bribe . . . Justice, justice shall you pursue, so that you may live . . . (Deut 16:19–20; cf. Exod 23:6–8). Although Job does not make the nature of his reasoning explicit, the implicit outlines seem fairly clear. The God who could legislate that Israelites set aside differences of power in the courtroom could conceivably be envisioned as also provisionally setting aside the terrifying overwhelmingness of his own power in order to allow his opponent at law to speak. Deuteronomy, of course, never makes the claim that this setting aside of worldly power for the sake of justice should be invoked in thinking through relations between a person and God. Indeed, the authors of Deuteronomy would probably have been scandalized by such a suggestion. Yet once Job has begun to pursue the analogy, the complexity of legal discourse leads him beyond parody into potentially constructive thought. The opening verses of chapter 10 continue Job’s exploratory imagining of what he would say if such a trial were possible. Here, too, several terms with legal nuance cluster together, as Job imagines saying to God, “Do not find me guilty (אל-תרשיעני); let me know what you charge me with (תריבני)” (10:2).

From this point on, legal language becomes a means of exploration, as Job reconfigures his situation, although explicitly legal speech occurs only infrequently.⁸ When Job rebukes his friends in chapter 13 he uses the terms “argument” (תוכחת), “legal pleadings” (רבות), “show partiality” (נשא פנים),

8 Other scholars see a much more prominent role for legal terminology, e.g., N. Habel, *The Book of Job* (Philadelphia: Westminster, 1985); F. R. Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job* (BJS 348; Providence: Brown University Press, 2007); eadem, “Through a Glass Lawyerly: Reading the Legal Metaphors of Job 1–31,” in *Law and Narrative in the Bible and in Neighbouring Ancient Cultures* (ed. K.-P. Adam, F. Avemarie, and N. Wazana; FAT 2/54; Tübingen: Mohr Siebeck, 2012), 123–38. Few of the terms used in legal discourse are truly technical terms. Most have ordinary meanings as well. Thus I restrict

and “argue” (ריב) (vv. 6–8), which together strongly suggest a legal frame of reference. When he imagines coming before God, Job evidently envisions the encounter in terms of a legal trial, saying “I have prepared a case” (ערכתי משפט, 13:18) and “I know I shall be found innocent” (ידעתי כי־אני אצדק). Other arguably legal terminology also occurs in his description. References to a “witness” (עד) and a “bearer of testimony” (שהד) in 16:19 and to a “kinsman-redeemer” (גאל) in 19:25 evoke legal discourse. The last extended use of legal terminology in the dialogue occurs in chapter 23, where Job again refers to “laying out a case” (אערכה לפניו משפט, v. 4a) and filling his mouth with “arguments” (תוכחות, v. 4b). Imagining God’s reply to his arguments (v. 5), he no longer thinks that God would “contend in power” (הבר־כח יריב עמדי, v. 6a), but anticipates “going free from my judge” (אפליטה לנצח משפטי, v. 7b). This account indicates that, although legal discourse may not predominate in Job’s thought, it remains a consistent presence.

What makes Job’s legal language so significant is its function as not simply a metaphor but a *generative* metaphor. Both Job’s speech and that of his friends is rife with metaphor, but most of these are surface or local metaphors. They appear, often make a rhetorically powerful point, but then disappear from the discourse. They do not have “legs.” Generative metaphors differ, not so much in structure as scope. They emerge at the site of a difficult or contested problem and serve to reinterpret the situation. In a discussion of metaphors in public policy discussions, Donald Schön argues that generative metaphor is not so much about problem solving as *problem setting*. Where parties are not in agreement about fundamental frameworks, issues are framed in relation to rival narratives and the metaphors that underlie them.

Problem settings are mediated, I believe, by the ‘stories’ people tell about troublesome situations—stories in which they describe what is wrong and what needs fixing. When we examine the problem-setting stories by the analysts and practitioners of social policy, it becomes apparent that the framing of problems often depends upon metaphors underlying the stories which generate problem setting and set the directions of problem solving.⁹

the presence of distinctly legal allusions to those contexts in which a cluster of terms characteristic of legal discourse occur together or where a genuinely technical term occurs.

- 9 D. A. Schön, “Generative Metaphor: A Perspective on Problem-Setting in Social Policy,” in *Metaphor and Thought* (ed. A. Ortony; Cambridge: Cambridge University Press, 1993), 138.

What Schön recognizes is the way in which metaphor works as a kind of “seeing as,” or what cognitive theorists of metaphor refer to as metaphorical “mapping” of one domain onto another. Because metaphors come with “entailments,” they direct thought along certain paths. This is why the legal language that appears in Job’s speeches plays an important role in his thought, even though it appears only sporadically and in an exploratory fashion.

One can make some measure of the importance of the legal metaphor in Job’s thought by correlating its appearance with a shift in his attitude toward death. In chapter 3 and again in chapters 6–7 Job speaks of death in positive terms as a condition that offers escape or release (3:11–19; 6:8–9; 7:15–16). Eliphaz’s offer of traditional narratives and the resources of prayer had attempted to restore Job’s orientation to meaningfulness and his sense of agency in his own life, but they had proven ineffective. Although Job begins his troping on the notion of a trial with God simply as an exercise in bitterness, the emergence of the generative quality of the metaphor at the end of chapter 9 and the beginning of chapter 10 is what actually begins to restore a possible sense of agency to Job. If he *could* meet God in a fair trial, then what possibilities might open up? Correspondingly, death begins to lose its attractiveness. Though Job speaks of death at the end of chapter 10, it is with something more akin to dread than longing (vv. 20–22), and from this point onwards death is no longer positively marked.

That Job begins to envision his situation in terms of a legal trial is clear. But what difference does it make? How does it frame what has happened to him, the nature of his relationship to God, the nature of the resolution he seeks? What does this model expose about the assumptions embedded in the practices of traditional piety, such as the friends have urged on Job? Even though one is comparing a hypothetical, envisioned practice with an established cultural practice, Job says enough about his desire for a trial with God to allow one to address these questions.

It is not the case that only within a forensic context could Job assert his innocence. The psalms contain examples in which the speaker asserts his own innocence (e.g., Ps 26), as well as those in which he confesses guilt (e.g., Ps 25). That is not the major difference. Rather, the difference is in the way in which the identities and roles of the parties are framed, and with that, the set of appropriate stances, emotional reactions, and modes of speech that are called for. In the psalms of complaint and thanksgiving, the relationship between the deity and the psalmist is a highly paternalistic one, as the various social metaphors of shepherd (23:1; 80:2), king (84:4–5), protector (18:2; 63:7–9), and benefactor (36:8–11; 104:10–18) indicate. The implicit model for

God in Israelite prayers of lament and thanksgiving is that of the “social father,” mirroring the social structure. Just as a patriarch has personal and moral responsibility for his household or community, so the one who prays to God expects such aid and support. Dependents, in turn, owe loyalty and honor to the social father. Although the relations sketched by this model are asymmetrical, they are also deeply personal, emotional, and mutual. The rhetoric of the complaint psalms is thus largely a rhetoric of grievance concerning the deity’s neglect of his dependent worshiper. Yet the psalms can also entertain the notion (not unfamiliar to Job) that the deity himself is the one attacking the psalmist in fury (e.g., Ps 38:2–4). Because of the nature of the relationship between the parties, however, the reaction to this divine violence is not outrage but a brief (perhaps even perfunctory) self-blaming (vv. 4b–5a, 6, 19) and an extended description of the pitiable state of the suffering psalmist (vv. 3–15, 18). The key to a resolution of the situation is to evoke the pity of the deity and thus his intervention to restore the hapless dependent whom it is the deity’s responsibility to protect. Not uncommonly, the honor and shame of God and the psalmist are conjoined (e.g., Pss 22:7–9; 31:18). Thus a frankly transactional quality often characterizes the appeal. The supplicant receives deliverance; the deity receives praise and an enhanced divine reputation (Pss 22:22–23; 30:10).

By envisioning a trial procedure, Job reconfigures the basic social relationship that governs the two parties. As noted above, Israelite law acknowledged that the parties to a dispute often might not be social equals. But for the purposes of the law, such differences were to be set aside (e.g., Exod 23:2). Thus in thinking in terms of a trial, Job is not claiming actual equality with God but simply a stipulated, provisional, “as if” equality. Given that premise, the rhetorics that are quite at home in complaint psalms are unthinkable in a forensic context. The difference can be seen in the way in which Bildad and Job employ the word *אֶתְחַנֵּן*, “seek mercy.” When Bildad invokes the rhetorical world of prayer, he rightly encourages the “blameless and upright” Job to “seek mercy from Shaddai” (8:5b). But when Job reconfigures the relation as a legal one, that the innocent Job should have to “plead for mercy from my judge” (9:15b) is an outrage to justice. For a similar reason divine violence has a different significance than it does in the psalmic laments. Whereas in the lament tradition divine violence was either justified or used as itself the basis for divine pity (Ps 38; Lam 3), the legal framework names it as criminal. In Job 16 Job uses language that may well allude specifically to Lamentations 3, but where the lament made the turn from divine violence to invoke the divine mercies (v. 21), Job invokes the image of the blood of Abel crying out from the ground (Job 16:18).

The hermeneutics of psalmic and forensic models also differs sharply. First, for psalms the significance of the situation is fundamentally emotional, personal, and relational, and so the rhetoric emphasizes these aspects. While legal appeal certainly does not exclude these things, it sets them within the context of an objective set of values that both sides take as normative. It also privileges reasoned argument. "I would set out my case before Him and fill my mouth with arguments. I would learn what answers He had for me and consider what He would say to me . . . There an upright person could reason with him" (Job 23:4–5, 7a). Thus the knowledge produced by each model is different. While the psalmist expects and even invites divine scrutiny of his inner self (Ps 26:2), the questions he poses to God do not expect literal answers (e.g., Ps 22:2). They function instead as appeals for transformation of the present situation. But when Job asks in the context of an imagined trial, "How many are my iniquities and sins? . . . Why do you hide your face?" (13:23–24; NJPS), he *is* requesting an explanation and an accounting. The legal process envisions a mutual disclosure of motives and intentions quite foreign to the world of prayer.

Second, the way relevant time is configured in the frames of psalmic prayer and legal process emphasizes their difference. In psalms of lament what is critical is the relationship between the present and the future. However the present situation has come to be of lesser importance than the belief that God can transform the future (cf. the friends' speeches in 5:19–27; 8:21–22; 11:15–20). Hope is the value embedded in this temporal configuration. The legal model, however, focuses on the relation of the past to the present, as it seeks to determine cause and effect and to assess responsibility. In chapter 10 Job constructs a hypothetical account of the past and of God's motives that could account for the situation that he now experiences (vv. 8–14). Truth, not hope, is the dominant value of the legal model. Unlike his friends, Job does not describe a future. What marks the end of the plot is the just judgment that will allow him to "escape forever from my judge" (23:7b).

Third, the role of narrative is different in psalmic and legal contexts. The psalms of lament and thanksgiving abound in implicit if not explicit narratives: narratives of responsibilities honored or neglected, narratives of anger and reconciliation, about endangerment and rescue, about sickness and healing, as well as stories of blame and exculpation. In a legal context this repertoire is narrowed down to one: stories of blame and exculpation. The legal process is set up in a way that encourages the telling of rival stories. But the structure of judgment in a legal context assumes that alternative stories cannot both be true. Either one will be declared false and the other true, or some

third version of the story will have to be constructed. In any event, the task of the legal process is to get *the* story right. That is what Solomon does in deciding between the two women who tell rival stories about dead and living babies (1 Kgs 3:16–28) and what Daniel does in unmasking the lies of the elders against Susanna (vv. 51–59). This is what Job seeks in his legal encounter with God.

Perhaps most importantly, the legal model redefines the roles of the characters. As I suggested at the beginning of this paper, God can sometimes be envisioned in the psalms as judge/accuser or as advocate, though mostly God is depicted as the neglectful or gracious *patrone*. The psalmist's role is almost exclusively that of complaining or humbly beseeching or grateful supplicant. In the legal model both God and Job can be envisioned in a variety of roles. These not only include God as judge and accuser but also God as accused (Job 16:18–19) and Job as accuser (9:17; 19:7; 27:2) and as the falsely accused (9:20; 10:7; 16:17). Above all, however, the critical role for Job is that of witness. As he first begins to explore the legal model, Job can only see himself as a failed witness, an intimidated witness (9:14–15), even a witness forced by torture to testify against himself (9:20). But as he develops the model and envisions speaking without intimidation (9:34; 13:20–21), the desire to give witness becomes so strong that, when he fears that impending death might prevent him from giving testimony, he imagines surrogates who could speak for him: the earth (16:18), a heavenly witness (16:19), an inscribed text (19:23–24), or a kinsman-redeemer (19:25). Yet it is clear that above all Job wishes to speak for himself, as he imagines doing in 23:3–7.

In *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*, the book she wrote with Dori Laub, Shoshana Felman describes a legal trial as a “crisis of truth” in which “the facts upon which justice must pronounce its verdict are not clear, when historical accuracy is in doubt and when both the truth and its supporting elements of evidence are called into question.”¹⁰ In this context testimony becomes a performative speech act. It *does* something. But what if there is no way in which an actual trial can be held? Here Felman has in mind the genocide of the Shoah. Then, she suggests, the frame of the trial may be transferred to society itself, and the function of witness ceases to be that of a role in a legal tribunal and instead becomes an identity to be lived out.

Something like this seems to happen to Job at the end of the dialogue. He has repeatedly and confidently imagined a trial with God, but then he has backed away again and again at the impossibility of such a thing. In the open-

10 S. Felman and D. Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (New York: Routledge, 1992), 5–6.

ing of his last speech in the dialogue he seems to have given up the notion of an actual trial but not the notion of giving testimony. He does swear an oath, as one would expect a witness to do. But his oath is "by the God who has taken away my right" (27:2). Thus it is itself already testimony. Moreover, this oath binds him not simply for the duration of a trial but for life: "As long as there is breath in me and the breath of God in my nostrils, my lips will speak no wrong and my tongue utter no deceit" (27:4). Job has taken on the identity of witness. To be sure, the words he goes on to utter are perplexing, because they seem like something that the friends could say, a defense of God's justice in the world. But framed as it is by Job's oath, I think these words have to be taken as a bitter but subversive return to what Job envisioned in chapter 9. The only way to expose the lies about God's supposed just governance is to put them in the mouth of someone who has so evidently been wronged and abused by God and to swear in the name of "the God who has taken away my right."

Oddly, Job seems to take on the role of fully confident witness in his final speech in chaps. 29–31, but this speech stands outside of the dialogue and so it is perhaps not fruitful to attempt to construct a psychological transition from the Job of chap. 27 to the Job of chaps. 29–31. It may be that the author of the book is simply using a different literary style to refract the potentialities in Job's situation. Whatever the case, these chapters are important, not only because they return again to legal language in Job's long oath of clearance in chap. 31 but because they envision the way in which his quarrel with God could be resolved in a manner that would preserve the honor of both parties. As Job describes his own upright conduct, he brings forward this example: "Did I ever reject the case of my servants, male or female, when they made a complaint (ריב) against me? For, what would I do when God arises; when he calls to account, what would I answer him?" (vv. 13–14). It is a mark of Job's own honor that he set aside the difference in power between himself and his servants and adjudicated their claims justly, even if it meant acknowledging that he had wronged them. In doing so, he gained rather than lost honor. So also, when the patriarch Judah saw the evidence that his daughter-in-law Tamar brought forth, and he declared "she is more in the right than I" (Gen 38:26), acknowledging his own fault, he gained rather than lost honor by doing justice. Thus Job has provided a model in which one could imagine God appearing, hearing Job's complaint, and acknowledging both Job's innocence and the injustice of his suffering.

The book of Job does not follow this option, however. Several reasons are possible. One has to do with the initial wager: Job must curse God or not, without knowing the reasons for his suffering (1:11–12; 2:5–6). Otherwise one does not know if Job fears God for nought. But the originating plot of the story does not weigh as heavily at this point in the book as do the theological

issues at stake. Generally, it is assumed—and I think rightly—that Job’s model for divine/human relations is rejected by the book as too parochial a view of God, positing God as “just like Job, only bigger.” The divine speeches, by contrast, invoke the sublimity of the created world, and through it, the incomparable awefulness of its creator. It is thus appropriate that the final part of the speech ends with what I would argue are celebratory depictions of Behemoth and Leviathan, suggesting that these creatures, as much as the human, are also made in the image of God (40:15, 19; 41:2). Job had assumed a Durkheimian view of God as the moral order writ large, whereas the divine speeches invoke the *mysterium, tremendum, et fascinans* of Rudolf Otto. The notion of a trial at law with such a force is simply ludicrous, a category mistake of the first order.

What the book of Job does not make clear in its concluding chapter is what kind of piety and religious life is suitable for an image of God of the sort depicted in the divine speeches. The friends had made the case for the psalmic and wisdom piety that corresponded to the paternalistic patriarchalism of traditional Israelite views of God. Job had made a stunning case for an alternative piety of argument, even legal argument, with a God who was assumed to be, above all, a moral deity with the capacity to act in immoral ways. It remains unclear whether the book of Job is in fact rejecting that image of God or simply declaring it to be insufficient by itself. Certainly, both Judaism and Christianity have retained the notion of a personal God, though only Judaism has developed the Joban piety of argument with God.¹¹ Reception of Job in the mid-twentieth century, in the wake of World War II and the Shoah, valorized that aspect of Job. Indeed, Elie Wiesel’s play, *The Trial of God (as it was held on February 25, 1649, in Shamgorod)*¹² makes the legal trial the central trope of the play. Berish, the character who figures Job, embodies a kind of piety that can be best characterized as protest theism. Refusing to escape the pogrom by renouncing his Jewish identity and being baptized, he maintains the only faithfulness that makes sense to him—dying with a cry of protest against God on his lips. Whether one construes Job’s response to God in 42:6 as submission or reconciliation, as many do, Wiesel rejects that stance as inadequate and models an unsubmitive and unreconciled figure of protest.

While the forensic element of Job continues to be important for religious stances that put the justice of God at the center of the divine/human rela-

11 A. Laytner, *Arguing with God: A Jewish Tradition* (Northvale: Aronson, 1990).

12 E. Wiesel, *The Trial of God (as it was held on February 25, 1649, in Shamgorod)* (trans. M. Wiesel; New York: Schocken, 1995). See also the television play by F. C. Boyce, *God on Trial* (London and Boston: BBC and WGBH, 2008), which depicts a trial of God conducted in Auschwitz.

tionship, the most recent artistic reception of Job in the twenty-first century shifts the focus toward the sublimity of the divine speeches, raising the question of whether the emotional anthropomorphism characteristic of traditional biblical religion remains plausible. Taking its cue from the divine speeches, Terrence Malick's *Tree of Life*¹³ attempts to explore the issue that the book of Job chooses not to explore: the nature of the life of piety that is implied by this view of deity. Juxtaposed against the images of the impersonal immensity of the universe, the grieving mother in the film takes the words of Job's God and directs them back to God: "Where were you?" "Did you know?" and implores God to "Answer me!" The one question that is not framed from the deity's words is the one that Job leaves hanging: "What are we to you?" And though the mother chooses to address this immensity as "thou," the intimacy the psalmist assumes is no longer available to her. When she relinquishes her son, it is to a mystery. Whatever this mystery is, it has given rise not only to the sublime galaxies and nebulae but also to life and to the capacity to love and to grieve. And so, at the end of the film, at the conclusion of a prolonged sequence of leave-taking scenes that makes clear the depth of her loss, her final words are "I give him to you. I give you my son." The viewer is left to ponder the reasons for what can only be described as words of trust. And perhaps this is what Job also decides as he chooses to be "consoled," that is, to leave the ash heap, to take up life again, to resume sexual love with his wife, and to bring ten more children into the world.

13 T. Malick, *Tree of Life* (Los Angeles: Fox, 2011), film. See C. Newsom, "The Book of Job and Terrence Malick's *Tree of Life*," in *Where the Wild Ox Roams: Biblical Essays in Honour of Norman C. Habel* (ed. A. Cadwallader; Sheffield: Sheffield Phoenix Press, 2013), 228–42.

The *Qāḍī* Before the Judge: The Social Use of Eschatology in Muslim Courts

Mathieu Tillier*

It was [also] said that the reason why Iblīs perished was that before Adam, the jinn were on earth. God sent Iblīs to act among them as judge (*qāḍī*). He did so with fairness (*bi-l-ḥaqq*) for a thousand years, so that he eventually was called “arbiter” (*ḥakam*). God called him thus and revealed to him his name. At that, he became filled with haughtiness. He became self-important and caused terror, hostility, and hatred among those to whom God had sent him as arbiter. This is assumed to have caused them to fight so bitterly on earth for two thousand years that their horses waded in the blood of [those killed].¹

The imagery of Muslim eschatology has long been neglected by historians, who regarded it as folkloric and without historical significance. Scholars have recently begun to take a renewed interest in eschatological thought. The Muslim conception of the hereafter is now better understood thanks to Christian Lange’s study of punishment in the Muslim imagination. In describing the map of hell, its creatures and the tortures they inflicted to the condemned,² Lange followed the footsteps of major contributions to the history of Occidental representations, such as Le Goff’s original history of the Purgatory in the 1980s.³ Le Goff argued that the imagery of the afterlife was closely linked to terrestrial judicial realities. “The other world was supposed to correct the inequalities and injustices of this one.”⁴ Similarly, Lange highlights the importance of high-ranking Muslims, whether they be religious scholars or rulers, who appear in the eschatological *ḥadīth* related to hell. The interpreta-

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1 Al-Ṭabarī, *Ta’rīkh al-rusul wa-l-mulūk* (ed. M. J. de Goeje; 15 vols.; Leiden: Brill, 1879–1901), 1:85. Trans. F. Rosenthal, in *The History of al-Ṭabarī, Volume 1: General Introduction and From the Creation to the Flood* (Albany: SUNY Press, 1989), 256–57 (with adaptations).

2 C. Lange, *Justice, Punishment and the Medieval Muslim Imagination* (Cambridge: Cambridge University Press, 2008), part II.

3 J. Le Goff, *La naissance du Purgatoire* (Paris: Gallimard, 1980).

4 *Ibid.*, 284.

tion of such traditions, however, is problematic. Lange suggests that traditions promising punishment of unjust rulers in the hereafter can be interpreted as encouraging an attitude of political quietism in this world. On the other hand, he also shows that eschatological traditions express anger and resentment against the state apparatus, and that they potentially embody criticisms against the social and political *status quo*.⁵ I have elsewhere argued that traditions describing *qāḍīs* in hell were put into circulation by traditionalists insisting on the personal responsibility of judges, and that they had to be interpreted within the framework of a broader discourse that highlighted the necessity of judicial independence of *qāḍīs*.⁶

Literature depicting *qāḍīs* in the afterlife is of particular interest, for they represent one of the main categories of officials described as appearing before God on Judgment Day. In a striking reversal of fortune, the earthly judge becomes the defendant before the supreme Judge. In this paper, I will mainly draw on biographical dictionaries and chronicles referring to Muslim courts of the ninth and tenth centuries CE to cast a question on the social use of this image. Whereas Le Goff argues that justice in the hereafter largely mirrors the model of earthly justice,⁷ I shall attempt to show that the representation of God's justice was in fact used as a religious expedient to reform the behavior of the judiciary and of the judicial organization. My argument is that allusions to eschatological indictments of Muslim judges went beyond literary and theoretical dimensions; they also had direct impact on judicial practices. Incessant reminder of how judges will themselves be judged on Judgment Day played an important role in the shaping and re-shaping of Islamic courtrooms.

1 Introductory Remarks: Courtrooms as Gateways to Hell

Since early Islam, Muslim jurists regarded courts as more than just a place where earthly disputes were resolved. They were places where the spiritual destiny of people appearing before the *qāḍī* was also at stake. According to certain jurists, litigants should not comply with wrongfully entered verdicts by a judge. For example, if a divorced woman failed to prove her case against her husband and the *qāḍī* judged that she was still married to the man who had divorced her, the husband would be committing fornication (*zinā*) if he continued

⁵ Lange, *Justice*, 161.

⁶ M. Tillier, *Les cadis d'Iraq et l'État abbasside (132/750–334/945)* (Damascus: Ifpo, 2009), 625–31.

⁷ Le Goff, *La naissance du Purgatoire*, 297–98.

having sexual intercourse with her. He would therefore have to answer to God for his crime.⁸

Moreover, the judicial procedure relied to a large extent on the fear of hell. If a claimant could not prove his right by testimonies (*bayyina*), the judge would ask the defendant to take oath. If he swore that he was innocent, the judge passed a decision in his favor. If the defendant refused to take oath, the judge could either pass judgment against him or defer the oath to the claimant. Either way, taking oath was a dangerous thing to do, since it potentially exposed the swearer to God's wrath; the perjurer would have to answer to God in the hereafter.⁹ Narratives describe early *qāḍīs*, such as the semi-legendary Shurayḥ, reminding defendants that they would go to hell if they committed perjury.¹⁰ Fear of involuntary perjury was a major reason for litigants' refusal to take oath.¹¹

Likewise, testimony was the most powerful type of evidence. *Qāḍīs* relied largely on the words of witnesses to pass judgment. Witnesses testified before the court without swearing to tell the truth, and, until the late eighth century CE, judges had few means of verifying their reliability. It was therefore only natural for *qāḍīs* to repeatedly admonish witnesses, reminding them that they were the actual judges in the case.¹² In Kūfa, around the year 105/723, Muḥārib b. Dithār once warned dubious witnesses by citing prophetic *ḥadīths* stating that false witnesses were destined for hell.¹³ Unlike those under oath, witnesses were not always conscious of the danger of their position, and such admonitions were apparently successful in early Muslim society sensitive to eschatological expectations. In Muḥārib b. Dithār's case for example, witnesses retracted their testimony. In a society where institutional means were scarce, it is likely that arousing eschatological fear was one of the only means of maintaining order and imposing compliance with law.

What is striking is that eschatological fear was not only instilled from above by state institutions, but also manipulated by its subjects. In Islamic

8 Al-Shāfi'ī, *Kitāb al-umm* (ed. Rif'at Fawzī 'Abd al-Muṭṭalib; 11 vols.; al-Manṣūra: Dār al-wafā', 2001), 8:97–98. Al-Shāfi'ī mentions however that other unnamed jurists disagree with this position and consider that the *qāḍī*'s decision can allow what in truth should be forbidden and forbid what in truth should be allowed. Al-Shāfi'ī, *Kitāb al-umm*, 8:101–2.

9 J. Pedersen and Y. Linant de Bellefonds, "Qasam," *Encyclopaedia of Islam* (2d ed.), 4:687.

10 Wakī', *Akhbār al-quḍāt* (ed. 'Abd al-'Azīz Muṣṭafā al-Marāghī; 3 vols.; Cairo: Maṭba'at al-sa'āda, 1947–1950), 2:318.

11 See for example Wakī', *Akhbār al-quḍāt*, 3:10.

12 Ibn Sa'd, *al-Ṭabaqāt al-kubrā* (8 vols.; Beirut: Dār Ṣādir, 1968), 6:133, 136; Wakī', *Akhbār al-quḍāt*, 2:354–55. Cf. R. Brunschvig, "Le système de la preuve en droit musulman," in *Études d'islamologie* (2 vols.; Paris: Maisonneuve et Larose, 1976), 2:207.

13 Wakī', *Akhbār al-quḍāt*, 3:34.

sources mainly written by religious scholars who did not immediately belong to the ruling class, *qāḍīs* appear as the main target of God's wrath on Judgment Day.

2 *Qāḍīs Before God: Ḥadīth and Its Interpretation*

2.1 *Non-Muslim Antecedents*

Dispensing justice gives the judge an enormous power over society; this authority can sometimes lead to great temptations. It is no wonder, therefore, that different civilizations shared the motif of judges being themselves accountable before divine forces. In late antique Christianity, canon laws already insisted on the ecclesiastical judge's responsibility in the hereafter. In the *Didascalia apostolorum*, a pseudo-apostolic text written in Greek in the third century CE and translated into Syriac in the early fourth century, deacons and bishops who were asked to arbitrate disputes between Christians are repeatedly warned against the temptation of partiality: "You shall render an account in the day of the Lord,"¹⁴ "Let them be judged before you as you also are surely to be judged,"¹⁵ "Thus judge as you also are surely to be judged."¹⁶ If a judge only listens to one party in the absence of the other and condemns the defendant on the basis of false testimonies, the judge "shall be partner before God of him that brought the false witness and with him [he] shall be tormented by God."¹⁷ "And if you have justly judged, you shall receive the reward of justice from God, both now and in that [world] to come. But if you have judged unjustly, so also shall you receive of God a retribution."¹⁸ The idea of permanent divine surveillance of the judge and of his accountability before God was already nascent in the Gospel of Matthew quoted in the *Didascalia*: "With what judgment you judge, you shall be judged" (Matt 7:2).¹⁹ A few centuries later, East-Syriac canon law developed the same idea, drawing explicit parallels between the earthly judge

14 A. Vööbus, ed. and trans., *The Didascalia Apostolorum in Syriac* (2 vols.; Louvain: CSCO, 1979), 1:122/2:115.

15 Ibid., 1:130/2:121.

16 Ibid., 1:132/2:122. See also A. Vööbus, ed. and trans., *The Synodicon in the West Syrian Tradition* (2 vols.; Louvain: CSCO, 1976), 2:156.

17 Vööbus, *Didascalia Apostolorum*, 1:135/2:124.

18 Ibid., 1:138/2:126. See also Vööbus, *Synodicon*, 2:157/159.

19 Vööbus, *Didascalia Apostolorum*, 1:133/2:123; idem, *Synodicon*, 2:165/170.

and the divine One.²⁰ The synod of the catholicos Ezechiel in 576²¹ demanded that priests remain incorruptible when dispensing justice, for “their judgment is the judgment of God”; for a judge, accepting a gift within a lawsuit would signify “his own condemnation” and “would provoke the ire of God” (*n’ayar ‘alaw l-rūgzō alōhōyō*).²²

2.2 Muslim Ḥadīths and Non-Prophetic Reports

In Islam, a series of *ḥadīths* (prophetic reports) depicting Muslim judges on Judgment Day were probably put into circulation during the course of the eighth century CE and collected systematically by authors of biographic works on *qāḍīs* in the ninth and early tenth centuries.²³ Inclusion of these reports in biographies or books dedicated to *qāḍīs* is of particular significance; such books cannot be read as simple “histories” of Muslim judgeship as they reformulate their history in order to reshape the judicial institution according to the prevailing ideologies and representations of their authors’ times. From this perspective, insistence on trial of *qāḍīs* in the hereafter is particularly striking in Wakī’s *Akhbār al-quḍāt*, a three-volume history of judges from several provinces (especially Medina, Baṣra and Kūfa) up until the third/ninth century. Here we shall examine these reports.

1. Under the authority of a long chain of transmitters ending with al-Sha‘bī < Masrūq < Ibn Mas‘ūd < Prophet: “Any judge who has dispensed justice among people will be brought by an angel holding him by his neck on the Day of Resurrection. [The angel] will secure him on the edge of hell (*jahannam*), and will then raise his head. If he is told “throw him!,” he will throw him in an abyss in which [the judge] will be falling down during forty springs.”²⁴

20 .ܐܡܪ ܒܡܬܐ ܕܥܙܝܚܐ J.-B. Chabot, ed. and trans., *Synodicon Orientale ou Recueil de synodes nestoriens* (Paris: Librairie C. Klincksieck, 1902), 123/382.

21 See J. Dauvillier, “Chaldéen (droit),” in *Dictionnaire du droit canonique* (ed. R. Naz; Paris: Librairie Letouzey et Ané, 1942), 3:320–21. On the catholicos Ezechiel, see ‘Amr b. Mattā, *Akhbār faṭārika kursī al-mashriq min Kitāb al-majdal*, in Maris Amri et Slibae, *De Patriarchis Nestorianorum Commentaria* (ed. H. Gismondi; 2 vols.; Rome: F. de Luigi, 1896), 2:43–44.

22 Chabot, *Synodicon Orientale*, 123/382. It is noteworthy that a similar theme was later developed in a thirteen-century Coptic legal manual in which Ibn al-‘Assāl (d. before 658/1260) threatens the bad ecclesiastical judge with God’s wrath and reminds him that God will ask him about his judicial practice on the Last Day [Ibn al-‘Assāl, *Kitāb al-qawānīn* (ed. Jirjīs Filūthā’ūs ‘Awḍ; Cairo: Maṭba‘at al-tawfīq, n.d.), 363].

23 Tillier, *Les cadis d’Iraq*, 627–28.

24 Wakī, *Akhbār al-quḍāt*, 1:19. *Ḥadīths* depicting similar situations do not usually mention *qāḍīs*, but rather “men (presumably *amīrs*) in charge of ten people [or more].” See

2. Shurayḥ b. 'Ubayd < [Anonymous] b. Masrūq < Mu'ādh b. Jabal < Prophet: "Let the *qāḍī* slip in hell on a sledge longer than the way to Aden."²⁵

3. Ṣafwān b. Sulaym < al-A'raj < Abū Hurayra < Prophet: "Any of God's creatures who dispenses justice among three [people] will be brought on the Day of Judgment with his hands tied up to his neck. Justice (*al-'adl*) will either unfasten his bounds or give him up [to hell]."²⁶

4. Ṣāliḥ b. Sarḥ < 'Imrān b. Ḥiṭṭān < 'Ā'isha < Prophet: "The just *qāḍī* will be brought on the Day of Judgment and he will receive such a punishment that he will wish he had never judged between two litigants."²⁷

Wakī' quotes non-prophetic reports that follow the same idea. Muḥammad b. Wāsi' (a famous Baṣrian ascetic, d. 123 or 127/740-41 or 744-45)²⁸ is supposed to have heard from an anonymous source: "The first to be called for judgment (*ḥisāb*) on the Day of Resurrection will be the *qāḍīs*."²⁹ This report is modeled on prophetic traditions in which the first to be judged are Adam,³⁰ the angel Isrāfīl³¹ or even the Prophet Muḥammad himself.³² Some reports mention that the punishment of bad *qāḍīs* will even begin before the Last Judgment, while

for example al-Ṭabarānī, *al-Muḥjam al-kabīr* (20 vols.; Mosul: Maktabat al-zahrā', 1983), 12:135.

25 Wakī', *Akhbār al-quḍāt*, 1:20.

26 Ibid. Cf. Ibn Ḥanbal, *Musnad Aḥmad b. Ḥanbal* (ed. Shu'ayb al-Arna'ūt and 'Ādil Murshid; 52 vols.; Beirut: Mu'assasat al-risāla, 1995), 36:635; 37:444; al-Dārimī, *Sunan al-Dārimī* (Beirut: Dār al-kitāb al-'arabī, 1407 H.), 2:313. In these books, the *ḥadīth* does not deal with *qāḍīs* but with *amīrs*.

27 Wakī', *Akhbār al-quḍāt*, 1:21. Cf. Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān* (ed. Shu'ayb al-Arna'ūt; 18 vols.; Beirut: Mu'assasat al-risāla, 1993), 11:439; al-Bayḥaqī, *Sunan al-Bayḥaqī al-kubrā* (ed. Muḥammad 'Abd al-Qādir 'Aṭā; 10 vols.; Mecca: Dār al-bāz, 1994), 10:96.

28 Ibn Ḥibbān, *al-Thiqāt* (ed. al-Sayyid Sharaf al-Dīn Aḥmad; 9 vols.; Beirut: Dār al-fikr, 1975), 7:366; idem, *Mashāḥir 'ulamā' al-amṣār* (ed. Majdī b. Maṣṣūr b. Sayyid al-Shūrā; Beirut: Dār al-kutub al-'ilmiyya, 1995), 180; al-Dhahabī, *Sīyar a'lām al-nubalā'* (ed. Shu'ayb al-Arna'ūt and Muḥammad Nu'aym al-'Araqsūsī; 23 vols.; Beirut: Mu'assasat al-risāla, 1413 H.), 6:119; Ibn Ḥajar, *Tahdhīb al-tahdhīb* (14 vols.; Beirut: Dār al-fikr, 1984), 9:441. According to Ibn Ḥajar, Muḥammad b. Wāsi' served as a chief of the police (*ṣāḥib al-shurṭa*) in Baṣra, but always refused to become a *qāḍī*.

29 Wakī', *Akhbār al-quḍāt*, 1:22.

30 Al-Bukhārī, *al-Ṣaḥīḥ* (ed. Muṣṭafā Dīb al-Bughā; 6 vols.; al-Yamāma-Beirut: Dār Ibn Kathīr, 1987), 5:2392; Ibn Ḥanbal, *Musnad Aḥmad b. Ḥanbal*, 14:488.

31 Ibn al-Mubārak, *Kitāb al-zuhd* (ed. Ḥabīb al-Raḥmān al-A'zamī; Beirut: Dār al-kutub al-'ilmiyya, 2004), 433. On this angel, see A. J. Wensinck, "Isrāfīl," *Encyclopaedia of Islam* (2d ed.), 4:211.

32 Al-Ḥakīm al-Tirmidhī, *Nawādir al-uṣūl fī ma'rīfat aḥādīth al-rasūl* (2 vols.; Beirut: Dār al-jil, 1992), 2:57.

the judge is still in his grave. "When the arbiter (*ḥakam*) dies, every judgment he passed will be presented before him in his tomb. If there is any disagreement about one of his decisions, he will be beaten so hard with an iron rod (*mirzaba min al-ḥadīd*) that his tomb will cough."³³

Muslim traditions depicting *qāḍīs* on Judgment Day do not describe physical confrontation with God. Moreover, these judges/defendants have no adversary in the form of claimants. The reader infers God's presence in the passages, but His presence is only represented by His servants, who execute His silent decision. The divine courtroom is not the mere reproduction of an earthly one. Beyond the theological reasons which could explain the absence of God's physical representation in these reports, procedures followed at the divine court are ontologically different to those prescribed by earthly courts. Whereas a Muslim judge must rely on external evidence such as testimonies and oaths that can be misleading, God's all-embracing knowledge allows him to judge rightly and immediately, without need for any further evidence.

2.3 *Traditions and Their Historical Context*

Parallels between Christian and Muslim traditions do not mean that the Islamic imagery of *qāḍīs* appearing before God on the Last Day is necessarily influenced by Christian (or other religious) representations. Both Christians and Muslims shared eschatological expectations in which God's judgment (the etymological meaning of the word "*dīn*") was a major component. It is possible that both legal systems reached the logical conclusion that judges, more than anyone else, should be accountable for their individual choices and decisions before God's celestial court. Islamic traditions must therefore be read in the historical context of their production.

These *ḥadīths* can be interpreted in two complementary ways. On the one hand, Joseph van Ess suggests that these traditions were put into circulation by legal experts belonging to the class of *mawālī* (clients, i.e., non-Arab Muslims). They were meant to be warnings against Arab judges who usually monopolized judgeships in the Umayyad and early Abbasid period. These legal experts considered many of the early *qāḍīs* to be incompetent, and as a kind of social revenge, they tried to frighten them by insisting on their personal responsibility before God.³⁴

In turn, these traditions also served the *qāḍīs* themselves. I have argued elsewhere that such reports should be read in the context of repeated attempts

33 Waki', *Akhbār al-quḍāt*, 1:32.

34 J. van Ess, "La liberté du juge dans le milieu basrien du VIII^e siècle," in *La notion de liberté au Moyen Âge: Islam, Byzance, Occident* (Paris: Les Belles Lettres, 1985), 27.

by the *qāḍīs* to detach themselves from political rulers and to gain more autonomy in their judgments. The participation of several *qāḍīs* from the late Umayyad and early Abbasid period in the transmission of similar *ḥadīths* suggests that they were interested in highlighting the eschatological dangers faced by judges.³⁵ By insisting on personal responsibility of judges before God, both theoreticians and practitioners of Islamic law may have attempted to undermine the authority of political rulers (governors, caliphs) over judges. This was the first step on a long path which eventually led to the first formulation of a theory of judicial autonomy of judgeship in the fourth/tenth century.³⁶

3 Anticipating the Divine Judgment: A Social Means of Pressure?

3.1 *The Qāḍīs' Receptivity to Eschatological Threats*

According to narrative sources, the idea that serving as a judge would jeopardize the soul in the hereafter spread at an early date in the milieu of legal scholars. Did Muslim judges believe these sayings that threatened them with God's wrath—be it in the form of popular sayings or, later, as more formal *ḥadīths*? A few historical reports suggest that the fear of divine punishment at times instilled real fear in the minds of *qāḍīs*. According to Ibn 'Asākir, the Companion Abū l-Dardā' (d. 32/652?), who became one of the first *qāḍīs* of Damascus, asked his camel not to sue him before God on the Last Judgment, for he had never maltreated it.³⁷ When 'Abd al-Raḥmān b. Ḥujayra (69–83/688–89–702) was appointed as *qāḍī* of Fustāt, in Egypt, his father is reported to have said: "We belong to God and to Him we will return (Qur'ān, 2:156)! This man is lost!"³⁸ In the late seventh century, the Kūfan judge 'Abd Allāh b. 'Utba (65–67/684–85–686–87?) is supposed to have refused a favor that someone, presumably a litigant, had asked him in secret, arguing that he would be condemned to burn in hell if he accepted.³⁹ According to Wakī', the Baṣran judge Iyās b. Mu'āwiya (95–101/713–20?) wept when he learned of a report—not yet attributed to the Prophet—informing that only one *qāḍī* out of three would go

35 Tillier, *Les cadis d'Iraq*, 628.

36 Ibid., 633ff.

37 Ibn 'Asākir, *Ta'rikh Madīnat Dimashq* (ed. 'Umar b. Gharāma al-'Amrawī; 80 vols.; Beirut: Dār al-fikr, 1995), 47:185.

38 Al-Kindī, *Akhbār quḍāt Miṣr*, in *Kitāb al-wulāt wa-kitāb al-quḍāt* (ed. R. Guest; Leiden: Brill, 1912), 315. French translation by M. Tillier, *Histoire des cadis égyptiens* (Cairo: Institut français d'archéologie orientale, 2012), 66.

39 Wakī', *Akhbār al-quḍāt*, 2:406.

to paradise.⁴⁰ A little later, the *qāḍī* of Damascus, Yazīd b. Abī Mālik (d. 130/747-48?), stated that any man who believes in God and in the Last Judgment shall see God's face on the Day of Resurrection, except the arbiter (*ḥakam*) who is unjust in his rulings due to his blindness.⁴¹

3.2 *Eschatology as a Means of Pressure*

Religious, pious opposition was especially keen to spread eschatological threats about *qāḍīs*. Scholars reproached them for being too close to the government (*al-sultān*); they claimed the *qāḍīs* had betrayed their knowledge by accepting to serve the ruler as judges. Pious men began threatening *qāḍīs* with hell as early as the Umayyad period. Wakī' relates how the Baṣran ascetic (*zāhid*) Muḥammad b. Wāsi' al-Azdī (d. 123/741 or 127/744-45)⁴² went to the *qāḍī* Bilāl b. Abī Burda (110-20/728-38) to warn him that the judge's own father, Abū Burda,⁴³ had accordingly transmitted a prophetic *ḥadīth*: "There is in hell a valley called Habbab,⁴⁴ where God could place any tyrant (*jabbār*)."⁴⁵ Then he told him: "Beware, Bilāl, not to be one of those whom He will place there!"⁴⁵ In the third/ninth century, the predicator Ghulām Khalīl (d. 275/888)⁴⁶ belonged to those who "insulted judges and testified against them that they would go to hell."⁴⁷ The verb "to testify" (*shahida*), a judicial term, suggests that pious scholars like Ghulām Khalīl regarded judges' trials before God as inevitable conclusions already underway.

In Oriental Christianity as well as in Islamic *ḥadīth*, the image of judges being judged by God was used first and foremost by the highest authorities (bishops/'*ulamā*') in order to impose a judicial system that respected the very laws they were trying to develop on society. Islamic sources, however, show that this image did not necessarily emanate from the top. At the level of the ordinary people, litigants also appropriated the idea that *qāḍīs* were accountable

40 Ibid., 1:313. Cf. al-Balādhurī, *Ansāb al-ashraf* (ed. Suhayl Zakkār and Riyāḍ Ziriklī; 13 vols.; Beirut: Dār al-fikr, 1996), 11:339.

41 Ibn 'Asākir, *Ta'riḫ Madīnat Dimashq*, 65:293.

42 On this scholar, see *supra*, n. 28.

43 On this follower, see J. Schacht, "al-Ash'arī, Abū Burda," *Encyclopaedia of Islam* (2d ed.), 1:693.

44 On this valley, see Lange, *Justice*, 160.

45 Wakī', *Akhbār al-quḍāt*, 2:25.

46 On this scholar, see C. Melchert, "The Transition from Asceticism to Mysticism at the Middle of the Ninth Century CE," *Studia Islamica* 83 (1996): 65-66.

47 Al-Qāḍī 'Iyāḍ, *Tartīb al-madārik wa-taqrīb al-masālik li-ma'rifat a'lām madhhab Mālik* (ed. Aḥmad Bakīr Maḥmūd; 4 vols.; Beirut-Tripoli: Dār maktabat al-ḥayāt-Dār maktabat al-fikr, 1967), 3:172.

for their decisions before God. Several reports dating from the first centuries of Islam illustrate the practical use of this eschatological responsibility in Islamic courts.

In the early second/eighth century, the Medinese judge Sa'd b. Ibrāhīm al-Zuhrī (appointed in 104/722-23?) warned a poet called Qind/Find that he would punish him severely if he carried on leading a dissolute life. One day, the *qāḍī* heard Qind singing (which could already be regarded as reprehensible) and discovered that he was also drinking. Without any lawsuit or other evidence, the judge immediately ordered to seize him and to inflict upon him a harsh punishment. The poet tried to provoke the judge's mercy and compassion by appealing to the example of some of his illustrious ancestors. When he saw that his appeal produced no effect, the poet changed his strategy and pleaded: "I beg you, for the sake of these young men who will go to hell, and to whom you belong yourself!" He even called him "scorpions' tails," an insult which referred literally to the long and curved moustaches of the *qāḍī*, but which could also be interpreted as a curse, his moustaches foreshadowing the scorpions that are supposed to pullulate in hell.⁴⁸ We do not know if this appeal was successful—a certain doubt lingers that it was not. In Egypt too, during the same 720s, a litigant dissatisfied with a judge's handling of his complaint, reminded him that the just God was looking at him while he dispensed justice. Here again the strategy failed and the *qāḍī* threw the insolent litigant in jail.⁴⁹

A few decades later, a poet played upon the judge's fear of damnation in a more successful way. The growing influence of traditionalism, in the second part of the second/eighth century,⁵⁰ had probably led to a larger dissemination of threatening *ḥadīths* against rulers in general or *qāḍīs* in particular. As a result, judges sometimes became more receptive to such pleas. In Mecca, around 170/786, judge Muḥammad b. 'Abd al-Raḥmān al-Awqaṣ al-Makhzūmī prayed one day in the mosque and begged (*da'ā*) God to release him from the punishment of hell. A poet called al-Dārimī had previously brought a case before the judge, but the latter was reluctant to give a decision. When he heard the judge's prayer, the poet exclaimed: "Do you deserve to be absolved? No, by God! May God not give you this favor, praise be upon Him!" He then identified himself and reproached the judge for his injustice. "Do not say that!" the

48 Waki', *Akhbār al-quḍāt*, 1:165. On scorpions in hell, see Lange, *Justice*, 128, 129, 135, 141.

49 Al-Kindī, *Akhbār quḍāt Miṣr*, 341 / trans. 96.

50 "Traditionalism" refers here to the trend of *aṣḥāb al-ḥadīth*, in which scholars would found their jurisprudence exclusively on *ḥadīth*. See C. Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries CE* (Leiden: Brill, 1997), 1.

qāḍī said immediately. "I decide in your favor!"⁵¹ Playing with the judge's fear of divine punishment helped the poet obtain the judgment that he had been seeking without success.

In late eighth-century Egypt, a poet (called Ishāq b. Mu'ādh b. Mujāhid b. Khayr) went to the judge al-Mufaḍḍal b. Faḍāla for a lawsuit. Instead of taking out from his sleeve the petition which he had prepared for the *qāḍī*, he took out a satiric poem in which he threatened al-Mufaḍḍal: "Fear God and listen to me, Mufaḍḍal, for you will have to answer for your judgments (*'an faṣl al-qadā' sa-tus'al*)!"⁵² Was it really a mistake, or did the poet do it on purpose? Be that as it may, it did not work this time: the *qāḍī* became angry when he read those lines and expelled the poet from the courtroom.⁵³ In another poem, Ishāq b. Mu'ādh attacked again the same *qāḍī*: "You will have to stand [before God] (*mawqūf*) and to give an account [of your deeds] (*muḥāsab*)!"⁵⁴ Subsequent verses directly accused the *qāḍī* of acting unjustly when the poet lodged a complaint before him.⁵⁵ Later, another poet composed a satirical piece about the *qāḍī* al-'Umarī (185–94/801–10) in which he reproached him for his injustice and added: "Do not be in a hurry, O Abū l-Nadā,⁵⁶ for you are running to your death. Certainly, hooked sticks sent from hell will catch you when you die."⁵⁷

Poets did not only threaten *qāḍīs* with divine punishment. By spreading satirical verses directed against judges, they could sully their reputations and cast doubt on their ability to render justice. In other words, they could transform a *qāḍī's* life into a social hell on earth. It is probably not by chance, therefore, that poets figure prominently in such reports. For a renowned poet, announcing the judge's trial in the hereafter was part of a wider rhetorical strategy with which he could put pressure on *qāḍīs* and obtain, at least, a just ruling. More than anyone else, poets could translate eschatological threats into social ones.

It is remarkable, however, that external pressure and recalling of divine punishment were not always necessary. If we believe certain narrative sources that insist on exemplary behavior and piety of exceptional judges, the idea that they would be put on trial for their judicial practice was deeply rooted in some *qāḍīs'* minds. According to al-Subkī, in early tenth-century Egypt, two

51 Waki', *Akhbār al-quḍāt*, 1:264.

52 Al-Kindī, *Akhbār quḍāt Miṣr*, 379 / trans. 143.

53 Ibid., 380 / trans. 143.

54 Ibid., 380 / trans. 144.

55 Ibid., 380–81 / trans. 144.

56 A nickname which referred to a famous thief at that time. Ibid., 401 / trans. 168.

57 Ibid.

litigants came one day to the Shāfiʿī judge Abū ʿUbayd ʿAlī b. al-Ḥusayn b. Ḥarb (293–311/906–24) disputing about a debt. One of them, called Ibrāhīm, had borrowed five dinars from a friend but could not repay him. When they entered the courtroom, however, Ibrāhīm spoke faster than his creditor and claimed that the latter actually owed him some money. The creditor was so surprised that he burst into laughter. The judge got angry at this reaction and shouted: “What are you laughing at? May God end your joy forever, for heaven’s sake! How do you dare laugh in a court (*majlis*) in which God is looking at you? You are laughing while your judge is between paradise and hell!” The judge decided to pay the reclaimed debt to Ibrāhīm out of his own money and ordered both litigants to leave the court.⁵⁸

The Islamic judicial system and its theoretically definitive decisions, with no formal system of appeal,⁵⁹ gave judges an important power over society. Litigants who feared injustice could sometimes bring their complaints directly before political authorities (during *mazālim* hearings), but most of the time the main means of pressure to obtain a just ruling was to appeal to the judge’s personal responsibility before God. If we believe the last narrative by al-Subkī, common efforts of pious men and litigants (especially those who had poetical skills) brought about some results, and some *qādīs* preferred paying out of their own pocket rather than running the risk of rendering a wrong decision.

4 Qādīs’ Piety: When God Attends the Earthly Court

Muslim judges’ sense of responsibility before God carried wide implications for the court in terms of its organization. From the early Abbasid period (second half of the eighth century CE), textual evidence suggests that some *qādīs* were explicitly placing themselves under God’s supervision when dispensing justice—usually in the mosque. The judge of Kūfa Sharīk b. ʿAbd Allāh (153–69 or 170/770–785–6 or 786–7) used to read in silence a petition (*ruqʿa*) that he took from his archive-box (*qimaṭr*) at the beginning of every hearing. The petition, which may have been sent by a litigant, carried an admonition to the judge,

58 Al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā* (ed. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw; 10 vols.; Cairo: Dār iḥyāʾ al-kutub al-ʿarabiyya, n.d.), 3:453. On Abū ʿUbayd, see also M. Tillier, *Vies des cadis de Miṣr* (Cairo: Institut français d’archéologie orientale, 2002), 85–97.

59 B. Johansen, “Le jugement comme preuve: preuve juridique et vérité religieuse dans le droit islamique hanéfite,” *Studia Islamica* 72 (1990): 13–15.

urging him to follow the right path and to fear the Last Judgment.⁶⁰ Sharīk's successor in Kūfa, al-Qāsim b. Ma'n, referred to a petition he kept in his *qimaṭr*, upon which were written three poetic verses asking him to show respect to morality and religion.⁶¹ In Arabic sources, those verses are alternatively attributed to the *qāḍī* himself or to the poet Sa'īd b. Ḥamīd (d. 250/864?).⁶² Even if it had been initially sent by a litigant, the fact that the judge read the petition every day suggests that the idea of his own judgment in the hereafter served as a guide or governing principle to his presiding over the court. Such behavior at the beginning of hearings was later theorized in Islamic law. In his *Adab al-qāḍī*—the first surviving handbook on judicial administration—the Ḥanafī jurist al-Khaṣṣāf (d. 261/874) recommended that a *qāḍī* open judicial hearings by a ritual prayer of two *rak'as*. He should then ask (*yad'ū*) God to assist him (*an yuwaffiqa-hu*), to guide him toward what is right, and to prevent him from disobeying his commands.⁶³

Qāḍīs were only human beings, prone to committing mistakes and therefore susceptible to being judged for such lapses. This idea penetrated the Islamic conception of justice to the extent that the whole material organization of the court was affected. Generally speaking, judicial administration was reinforced under the Abbasids. Centralization of appointments, salary increases, and professionalization of judgeship gradually gave the *qāḍīs* a high standing. This had an impact on the way they held their hearings. As important rulers, judges came to abandon simple furniture made of rush mats upon which Umayyad *qāḍīs* usually sat. Instead, they adopted more luxurious carpets and cushions which allowed them to sit in a higher and more visible position. This pomp was representative of their belonging to the high-standing state apparatus, and, on a symbolic level, established them as equals to other state appointees such as financial or military governors.⁶⁴

60 Al-Khaṭīb, *Ta'riḫ Madīnat al-Salām* (ed. Bashshār 'Awwād Ma'rūf; 17 vols.; Beirut: Dār al-gharb al-islāmī, 2001), 10:399. Cf. Ibn al-Jawzī, *al-Muntaẓam fī tawāriḫ al-mulūk wa-l-umam* (ed. Suhayl Zakkār; 13 vols.; Beirut: Dār al-fikr, 1995), 5:419.

61 Waki', *Akhbār al-quḍāt*, 3:178.

62 Al-Marzubānī, *Nūr al-qabas al-mukhtaṣar min al-muqtabas* (ed. R. Sellheim; Wiesbaden: Franz Steiner, 1964), 280; al-Māwardī, *Adab al-dunyā wa-l-dīn* (Beirut: Dār al-kutub al-'ilmiyya, 1987), 111. On this poet, see Kh.-D. al-Ziriklī, *al-A'lām: Qāmūs tarājīm li-ash-har al-rijāl wa-l-nisā' min al-'arab wa-l-musta'ribīn wa-l-mustashriqīn* (8 vols.; Beirut: Dār al-'ilm li-l-malāyīn, 1997), 3:93.

63 Al-Khaṣṣāf, *Kitāb adab al-qāḍī* (ed. F. Ziyāda; Cairo: The American University in Cairo Press, 1978), 85–86.

64 See my forthcoming book, *Rendre la justice aux deux premiers siècles de l'Islam*.

There was, however, resistance to this evolution. For some reason, certain *qādīs* rejected such secular symbols of their office. In the early ninth century, the Baghdadi judge ‘Alī b. Ḍabyān refused the comfortable carpets used by his predecessors and seated himself on a simple mat of reeds (*bāriya*).⁶⁵ A few decades later, ‘Abd Allāh b. Muḥammad al-Khalanjī (*qādī* of al-Sharqiyya, a quarter of Baghdad, 228–237/842–3–851–2) also created an ascetic judicial theatre, as if he wanted to magnify the religious nature of his office. Wakī’, and later Ibn ‘Asākir, describe how this judge sat in the mosque at the foot of a column. Between two lawsuits, he relaxed his back on the column and remained totally motionless until the next litigants arrived.⁶⁶

Through such ascetic attitude, the *qādī* showed how his personal piety guided his judicial practice: he would be able to stand before God without fear on the Day of Judgment. There was, however, a discrepancy between this pious attitude and the political reality of judgeship. Al-Khalanjī was *qādī* at a time when judges’ authority over Muslim society was reinforced by their role in the *miḥna* (inquisition): they were asked by the caliphate to examine witnesses (*shuhūd*) and to reject testimony of those who did not believe in the theological dogma of creation of the Qur’ān. Their role in this inquisition, which had important economic and social consequences, was bitterly resented by many Muslims. Al-Khalanjī’s attitude could therefore appear to be hypocritical. Some people, at least, did not take him seriously and took revenge by making fun of him. One day, jokers put some glue on the part of the column where the judge used to lay his head between two trials. When al-Khalanjī sat up, his turban stuck to the column and the *qādī* remained bare-headed—a most degrading humiliation.⁶⁷ The ascetic attitude of some judges was criticized in an ironic manner, in the same period, by al-Jāḥiẓ (d. 255/868–69) in his famous depiction of the *qādī* of Baṣra ‘Abd Allāh b. Sawwār (192–98/807–8–813–14). According to al-Jāḥiẓ, this pious judge could sit all day long, straight and motionless, without moving a muscle and talking as little as possible.⁶⁸ By not moving, the *qādī* probably wished to meet the requirements of Islamic law by avoiding any ambiguous movement that could otherwise have been interpreted as his preference for one litigant over another.⁶⁹ With his ascetic

65 Wakī’, *Akhbār al-quḍāt*, 3:286; Ibn al-Jawzī, *al-Muntaẓam*, 5:562.

66 Ibn ‘Asākir, *Ta’rikh Dimashq*, 32:379–80. Cf. Wakī’, *Akhbār al-quḍāt*, 3:290.

67 Ibn ‘Asākir, *Ta’rikh Dimashq*, 32:379–80. Cf. Wakī’, *Akhbār al-quḍāt*, 3:290.

68 Al-Jāḥiẓ, *Kitāb al-ḥayawān* (ed. ‘Abd al-Salām Muḥammad Hārūn; 8 vols.; Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1965), 3:343–44.

69 M. Tillier, “La société abbasside au miroir du tribunal: égalité juridique et hiérarchie sociale,” *Annales Islamologiques* 42 (2008): 158.

posture, he embodied righteousness and justice before God and the Muslim people. However, al-Jāḥiẓ suggests that his exaggerated attitude was actually a sign of megalomania and could even appear as blasphemous: what human being could pretend to command such full control of his body? The *qāḍī* had to acknowledge his weakness when, one day, a simple fly landed on his nose and annoyed him to such an extent that he eventually lost his temper. The almighty God had recalled him to more humility.⁷⁰

5 Conclusion

God was the lawgiver in early Islam. Implementation of His law, however, was in the hands of human beings who were prone to occasional mistakes, and easily influenced by passions and wayward social and political networks that could lead them astray. *Qāḍīs* were appointed by political rulers (i.e., provincial governors and caliphs), and in practice Muslim subjects had very few means of exerting pressure against an unjust judge. If they could not easily appeal to the ruler, they could at least appeal to the judge's sense of responsibility. Muslims drew on eschatological thinking, which expanded the Qur'ānic idea of divine judgment on the Day of Resurrection. The divine courtroom reflected the earthly one; however, by a mirror effect, roles were reversed in the after-life. Judges would be judged, and victims of judges would testify against them. God's court was the last and definitive court of appeal.

This image, which has parallels in Syrian canon law, spread probably as early as the Umayyad period in the form of sayings and/or prophetic traditions. Pious scholars who opposed corrupted practices of judges and their commitment with secular authorities were especially keen to promulgate these sayings and to emphasize the spiritual dangers that threatened *qāḍīs*. Examples from the late eighth and ninth centuries CE suggest that judges were (or became) receptive to these threats. Litigants fearing an unjust ruling reminded their judges of their fate, and some judges would apparently pay from their own monies rather than take the risk of rendering a wrong decision. Avoiding judgment through fear of God's wrath developed simultaneously in Jewish courts, where amicable settlements became the rule.⁷¹ This practice remained probably an exception in Islamic courts. Some jurists argued that judges who always relied

⁷⁰ Al-Jāḥiẓ, *Kitāb al-ḥayawān*, 3:344–45.

⁷¹ S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza: Volume II, The Community* (Berkeley: University of California Press, 1971), 334–35.

on appearances to give their judgment had nothing to fear: they would be rewarded by God for their effort (*ijtihād*) even if they had pronounced a wrong decision.⁷² It is clear, however, that this image of a Muslim judge appearing before God had a certain impact on the organization of the courts. Whereas there was a general tendency, under the Abbasids, to highlight the judges' authority over the community, some *qāḍīs* adopted an ascetic behavior and rejected secular signs of their authority. Fear, modesty, and humility would not save them from committing any mistake, but it would, at least, save them from God's wrath.

72 Al-Shāfiʿī, *al-Risāla* (ed. Aḥmad Muḥammad Shākir; n.p.: Dār al-fikr, n.d.), 494, 496–97.

Lawsuits against God in Rabbinic Literature

*Dov Weiss**

Readers of the Hebrew Bible likely know well that biblical characters often use courtroom language to critique divine morality. This trope most famously appears in Abraham's arguing with God over the proposed destruction of Sodom and Gomorrah, when Abraham calls out: "Will not the Judge (השפט) of the earth act justly (משפט)?"¹ Similarly, Jeremiah introduces the framework of a legal lawsuit (ריב) into his criticisms of God. In so doing, he reverses earlier prophets, such as Micah and Isaiah, who describe God's bringing a lawsuit against Israel when they breach the covenant. Jeremiah reasons that "if Yahweh could sue Israel for breach of contract, Jeremiah could turn and sue Yahweh for breach of contract as well."²

You will be in the right, O Lord, when I make a claim (אריב) against You, yet I shall pass judgment (משפטים) on You. Why does the way of the wicked prosper? Why are the workers of treachery at ease? (Jer 12:1)

In this case, it is not God who brings a legal claim (ריב) against Israel for neglecting justice (משפט); rather, Jeremiah brings a counter-claim (ריב) against God for creating an unjust world where the wicked prosper. In this verse, Jeremiah boldly passes judgment (משפטים) on God.³ The usage of forensic imagery to confront God is also found in the book of Job, in particular in chapters 9, 13, and 23, where such terms as "claim" (ריב)⁴ and "justice" (משפט) also appear frequently.⁵

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1 Gen 18:25.

2 W. Holladay, "Jeremiah's Lawsuit with God," *Int* 17 (1963): 283.

3 On Jeremiah's lawsuit against God, see S. Blank, "The Confessions of Jeremiah and the Meaning of Prayer," *HUCA* 21 (1948): 331–54, and Holladay, "Jeremiah's Lawsuit."

4 Job 9:2 and 13:6. On the legal terms appropriated by the author of Job, see M. Z. Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (WUNT 2/289; Tübingen: Mohr Siebeck, 2010), 41 n. 78. For possible meanings of the word ריב, see J. Limburg, "The Root ריב and the Prophetic Lawsuit Speeches," *JBL* 88 (1969): 291–304.

5 Job 13:18, 23:2–4. For an analysis of the juridical language in Psalms, see H. Schmidt, *Das Gebet der Angeklagten im Alten Testament* (BZAW 49; Giessen: Töpelmann, 1928).

When tracing this daring motif in rabbinic literature, it ought to be noted that tannaitic texts (third century CE) do not generally adopt the biblical paradigm of appropriating legal terminology when questioning God. In fact, rabbinic texts from the early tannaitic period evince a near-unanimous antipathy to the notion of challenging or critiquing God.⁶ Unlike texts from the amoraic (third through fifth centuries CE) and post-amoraic periods (sixth through eighth centuries CE) which produce an abundance of celebrated confrontational narratives, tannaitic texts contain few of them.⁷ I argue that this reality reflects an early rabbinic culture that opposes the act. My reading is bolstered by the fact that tannaitic texts explicitly prohibit protesting God and God's justice system. Consider the following midrash found in *Sifre Deuteronomy*, a third-century work:

"The Rock"—the Powerful One—"His deeds are perfect" (Deut 32:4): His actions in regard to all creatures of the world are perfect; one should not criticize whatsoever about His actions.

None of them can look at Him and say: Why should the Generation of the Flood have been swept away? Why should the people of the tower [of Babel] have been scattered from one end of the earth to the other? Why should the people of Sodom have been swept away by fire and brimstone? Why should Aaron have assumed the priesthood? Why should David have assumed the kingship? Why should Korah and his followers have been swallowed up by the earth? Therefore the verse goes on to say: *"Yea, all His ways are justice (משפט)"* [ibid.]: He sits in judgment (בדין) on everyone and dispenses to each what is appropriate for him.⁸

This tannaitic text links the prohibition against complaint to the first passage of Moses' poem at the end of Deuteronomy: "The Rock [i.e., God's], His deeds are perfect; yea, all His ways are justice" (Deut 32:4). While this biblical passage does not discuss criticizing God, the midrashic author argues that questioning divine justice would be tantamount to denying divine perfection—in effect, denying the theological principle of Deuteronomy 32:4 that God's deeds are

6 David Kraemer concludes similarly when tracing rabbinic reactions to human suffering. See D. C. Kraemer, *Responses to Suffering in Classical Rabbinic Literature* (New York: Oxford University Press, 1995), 91–101.

7 For rare exceptions, see *Sifre Num.* 95; *Sifre Deut.* 323.

8 *Sifre Deut.* 307. This text only appears in MS London 341. This translation is based on R. Hammer, *Sifre: A Tannaitic Commentary on the Book of Deuteronomy* (Yale Judaica Series; New Haven: Yale University Press, 1986).

perfect. *Sifre* posits that, given God's perfect justice, it would not only be futile but inappropriate to challenge any of God's judicial decisions.

A second tannaitic text that prohibits one from challenging God appears in *Mekhilta de-Rabbi Ishmael*, a third-century CE compilation on Exodus:

"He is one; who can dissuade (ישיבנו) Him? Whatever He desires, He does" (Job 23:13) . . . [Interpreting this verse], he [Rabbi Akiva] said: One should not challenge (אין להשיב) the words of Him who spoke and the world came into being, for every word is in accordance with truth and every decision in accordance with justice (בדין).⁹

In this passage, Rabbi Akiva bases his teaching on a passage from Job: "He [God] is one; who can dissuade Him? Whatever He desires, He does" (Job 23:13). In the biblical context, Job critiques God, bemoaning the fact that God never changes his mind. Whatever God desires—no matter how just or unjust—He will do, and given God's immense power, there is no one who can stop Him. Indeed, the entire chapter in which this passage appears is replete with critiques of God.

Rabbi Akiva, however, turns the verse upside down. Instead of Job challenging God, Akiva has Job declare the very opposite: that one should *not* challenge God. To accomplish this exegetical inversion, Akiva offers a new explanation as to why one should not protest God's actions. Instead of discouraging such protests due to their futility, as the simple reading suggests, Akiva disapproves the challenge that they pose to God's moral perfection. As God judges with truth and justice, it would be senseless, if not subversive, to oppose God's decisions. Remarkably, a biblical passage which critiques God becomes the very source of its prohibition! And, ironically, it is Job, the quintessential man of *chutzpah*, whom Akiva makes into the paradigm of reverential devotion to God.

Indeed, many post-tannaitic midrashim preserve and even intensify the anti-confrontational rhetoric seen in the above rabbinic passages. However, other post-tannaitic midrashim appear to celebrate the confrontational act by placing a critique of God into the mouth of a biblical character. Although the rabbis who construct these confrontational narratives do not explicitly state that challenging God is appropriate, it is significant that they usually place the critique in the mouth of a well-established biblical hero, rather than a villain. While biblical heroes are often presented as flawed individuals, the rabbis do not present these acts of protest as moments of misconduct or impropriety. On the contrary, in the overwhelming majority of these exegetical dialogues, God does not admonish or punish the challenger, leading us to conclude that the

⁹ *Mekhilta de-Rabbi Ishmael, Beshallah* 6.

midrash's authors condone, if not celebrate, the act. Critically for our purposes, forensic terms are often used to express this moral challenge, most notably referencing God's דין, meaning "court case," "judgment," or "justice." Unlike the typical legal language employed in the Hebrew Bible, such as "claim" (ריב) or "justice" (משפט), rabbinic literature often has various characters call for judgment, דין, against God, or argue that God's דין should be scrutinized or challenged. For example, *Genesis Rabbah* (fifth century CE) has Abel blaming God for complicity in Abel's own murder, as God failed to intercede on his behalf. Significantly, this amoraic text has Abel using courtroom imagery—and specifically the term דין—in his critique: "Let my court case (דיני) appear before the King!"¹⁰ In late midrashic texts, Moses brings a court case, דין, against God for denying him entry into the Promised Land,¹¹ and according to *Ecclesiastes Rabbah*, Saul "judges" (מדדין) God for demanding that he commit genocide against the Amalekite people.¹²

While these types of midrashim highlight how the sages employ forensic language in their critiques of divine conduct, they do not present us with an actual courtroom scene. As Michael De Roche convincingly argues with regard to the biblical use of the term ריב, the use of forensic language to critique God is not always tantamount to a lawsuit. "The quarrel between Yahweh and Israel [often] remains on a personal, bilateral level... [for] this reason the terms 'prophetic lawsuit' and 'covenantal lawsuit' should be abandoned."¹³ Thus, sensitive to de Roche's distinction, and given the theme of this volume, I will analyze three late midrashic texts (sixth and seventh centuries CE) that provide us not only with a bilateral court case (דין) with God, but present full-fledged lawsuits within imagined courtrooms. By elucidating three post-amoraic texts, I hope to theorize why late Palestinian sages sometimes appropriate courtroom frameworks to launch protests of divine conduct. Put differently, this paper asks: what does a highly charged courtroom scene provide the sages? And how does placing an ethical critique of God into this context affect the nature of that critique and God's subsequent response? I will address these questions after analyzing these three courtroom midrashim.

10 *Gen. Rab.* 22:9. For a more thorough treatment of this text, see M. Halbertal, "If It Were Not a Written Verse It Could Not Be Said," *Tarbiz* 68 (1998): 43, 44 (Hebrew); J. Levinson, "Fatal Fictions," *Tarbiz* 68 (1998): 61–86 (Hebrew).

11 See *Deut. Rab.* 2:7, 8, according to MS Parma 1240, *Deut. Rab.* (Lieberman 47) and *Midrash ha-Gadol Deut.* (Fish 61), s. v. אֶתֶּה הַחֲלוּת. Cf. *Pesiq. Rab.* (Ish Shalom 47) 'aharei mot, s.v. וַיִּדְבֵּר אֵל ה'.

12 *Ecccl. Rab.* 7:16.

13 See M. De Roche, "Yawheh's Rib against Israel: A Reassessment of the So-Called 'Prophetic Lawsuit' in the Preexilic Prophets," *JBL* 102 (1983): 574.

Case 1: The Birth of Dinah

Midrash Tanḥuma (ca. sixth century CE) rewrites the biblical account of the birth of Dinah (Gen 30:21) to produce a combative encounter between Leah, Dinah's mother, and God:

You find that this happened to Leah. After she had given birth to six sons, she foresaw in a dream that Jacob would ultimately have twelve sons. Since she had already given birth to six sons, and was pregnant with her seventh child, and the two handmaids had each born two sons, making ten sons in all, Leah arose and angrily confronted the Holy One, saying: Master of the Universe, twelve tribes are to descend from Jacob, and since I have already given birth to six sons, and am pregnant with a seventh child, and each of the handmaidens has born two sons, which accounts for ten sons, if the child within me is a male, my sister will not bear even as many sons as the handmaidens. The Holy One, blessed be He, hearkened to her prayer and converted the fetus in her womb into a female, as it said: “*And afterwards she bore a daughter and called her Dinah*” (Gen 30:21). The masculine form of “afterwards” is written in this verse and not the feminine.

Why did Leah call her Dinah? Because the righteous Leah stood up in judgment (בדין) before the Holy One, blessed be He. The Holy One, blessed be He, said to her: You are merciful, and so I shall be merciful to her. Forthwith, “*And God remembered Rachel*” (Gen 30:22).¹⁴

In this reading, Leah foresees that only twelve boys will be born to Jacob. Thus, should she, Leah, give birth to her seventh boy, Rachel, her sister, would be left with only one son, while each of Jacob's handmaidens would have two sons. Outraged by this possibility, and desperately seeking a girl, Leah angrily confronts God, declaring: “If the child within me is a male, my sister will not bear even as many sons as the handmaidens.” At this point, God concedes the challenge and miraculously switches the sex of the fetus from male to female. The *Tanḥuma* has Leah naming her daughter Dinah after Leah's decision to “stand in judgment (דין) before God.”¹⁵ The root of the name Dinah is דין (judgment);

¹⁴ *Tanḥuma* (Warsaw) Vayyeṣe' 8.

¹⁵ Given its context, some modern translators of this *Tanḥuma* text have over-translated this phrase. For example, S. A. Berman, *Midrash Tanḥuma-Yelammedenu: An English Translation of Genesis and Exodus* (Hoboken, N.J.: Ktav, 1996), 193, translates: “Leah pleaded for justice before the Holy One, blessed be He.” Adopting an even more aggressive

through this name designation, Leah marks the courageous moment in which she angrily stood as a litigant and confronted God in a court of law.

The appropriation of courtroom imagery to confront God is not unusual for the midrashic authors. As Joseph Heinemann has noted, complaints against God in rabbinic literature are often patterned on a courtroom scene where the petitioner assumes the role of defendant and God plays the judge.¹⁶ Heinemann points out that the specific roles played by the petitioner and God are often interchangeable. It is only a small step from defending oneself against accusations to launching counter-accusations. Thus, “[t]he petitioner (often) . . . plays a double role. At times he is the defendant or the accused party . . . at other times he becomes the prosecutor who hurls accusations. God, then, is not only the judge . . . but is [H]imself a *litigant* in the case.”¹⁷ Following Heinemann, Leah’s “standing before God in judgment” in this text signals that God is also being judged. The midrash’s conclusion supports this reading, for God concedes Leah’s challenge by declaring “[since] you [Leah] are merciful, so I [God] shall be merciful to her [Rachel].” This line indicates that not only have Leah’s claims been justified but that through the process, God, the judge, has recognized His ethical shortcomings and been moved by the court proceedings. Thus, in contrast to the classical theological maxim of *imitatio dei*, where man imitates God’s ethical traits (“just as God is merciful, so shall you be merciful”),¹⁸ God here learns to be merciful from a human being—*imitatio hominis*!¹⁹ Leah has become an ethical role model for divine behavior.²⁰

reading, Menachem Fisch, “Judaism and the Religious Crisis of Modern Science,” in *Nature and Scripture in the Abrahamic Religions, 1700–Present* (ed. J. M. Meer and S. Mandelbrote; Leiden: Brill, 2009), 558, translates: “Leah the righteous called the Almighty to task.” For other instances in rabbinic literature where the term “standing in judgment before God” (‘עמדה בדִין לפני ה’) is used, see *Sifre Deut.* 306; *Lev. Rab.* (Vilna) 29:1; and *Pesiq. Rab.* 40.

16 J. Heinemann, *Prayer in the Talmud: Forms and Patterns* (SJ 9; Berlin: de Gruyter, 1977), 202. Heinemann, however, problematically assumes that *all* critiques of God in rabbinic literature follow the courtroom pattern even where no forensic imagery is evoked.

17 Ibid. A similar argument runs through the recent work of Kensky, *Trying Man, Trying God*.

18 *B. Šabb.* 133b.

19 On the notion of *imitatio hominis* in rabbinic literature, see D. Stern, *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies* (Evanston, Ill.: Northwestern University Press, 1996), 73–94.

20 Fisch, “Religious Crisis,” 558–59, correctly notes that “God [here] is depicted as having erred in indeed giving Leah a seventh male child . . . God is astonishingly described as being corrected on moral grounds, admitting his mistake, and righting the morally flawed situation for which He was responsible . . . God, the *Tanḥuma* all but states openly, is simply *not* the all-perfect judge, and should not be treated as such by anyone!” (italics in

Case 2: Salvation through Children

According to some rabbinic texts, wicked parents are saved from going to גיהנום (Hell) if their children die young or righteous.²¹ While the sages adduce a number of different scriptural prooftexts to anchor this theology, one passage from *Ecclesiastes Rabbah* (ca. sixth century CE) regards the principle as established on a mythic courtroom encounter between young children who have died and God:

“But I returned and considered all the oppressions that are done under the sun [and behold the tears of such as were oppressed, and they had no comforter]” (Eccl 4:1) . . . R. Judah says: It refers to the children who are buried early in life because of the sins of their fathers in this world. In the Hereafter they will stand with the righteous group [in heaven], while their fathers will stand with the wicked group [in גיהנום]. They [the children] will speak before Him: Lord of the universe, did we not die early only because of the sins of our fathers? Let our fathers come over to us through our merits. He (God) replies to them: Your fathers sinned [only] after your [death], and their wrongdoings accuse them.

R. Judah b. R. Ilai said in the name of R. Joshua b. Levi: At that time, Elijah (may he be remembered for good) will be there to suggest a legal defense. He will say to the children: Speak before Him: Lord of the universe, which attribute of Yours predominates, that of goodness or punishment? Surely the attribute of goodness is great and that of punishment small, yet we died through the sins of our fathers.

If then the attribute of goodness exceeds the other [attribute], how much more should our fathers come over to us [and join us in heaven]!? Therefore He [God] says to him [Elijah]: You have taught them a good defense; let them come over to you; as it is written, *“And they shall live with their children, and shall return”* (Zech 10:9); which means that they (the

original). Leah's sister Rachel also becomes an ethical role model for God in proem 24 of *Lamentations Rabbah* (and *Eliyahu Rabbah* 30/28). On this text, see Stern, *Midrash and Theory*. For other instances in rabbinic literature where God learns from other humans how to behave ethically, see *Pesiq. Rav Kah.* 15:7 (where God learns to act ethically from the evil Nebuzardan), 16:5; *Eccl. Rab.* 3:16 (where God learns from Nebuchadnezzar how to be merciful); and *Pesiq. Rab.* 29/30 and 30.

21 For a full explication of this theology, see D. Weiss, “Between Values and Theology: The Case of Salvation through Children in Rabbinic Thought,” *Milín Havivin* 3 (2007): 1–15.

parents) returned from the descent to גיהינם and were rescued through the merit of their children.²²

In the first part of the midrash, Rabbi Judah reads Ecclesiastes' description of "all the oppressions that are done under the sun" (Eccl 4:1) as referring specifically to children who die young because of the sins of their parents. Brazenly, this late rabbinic text depicts the biblical dictum of trans-generational punishment wherein God "visits the iniquity of the fathers upon the children to the third and fourth generation" (Exod 20:5) as oppressive.²³ Despite dwelling with the righteous in heaven (ostensibly because they died without sin), these children are deemed "oppressed" not only because they have lost their lives through no fault of their own, but also because they "have no comforter" (Eccl 4:1), as their fathers are with the wicked in גיהינם. In Rabbi Judah's account, they protest their oppression in a divine courtroom; using a legal *a fortiori* argument, the children request that their parents be allowed to join them in heaven. They argue that if they themselves died young in this world because of their parents' sins, then, conversely, their parents should be rewarded in the next world for their children's merit. Unfortunately, God, the judge, denies their wish, arguing that the death of righteous children only atones for sins committed by the adults before the moment of their child's death, but not those committed after. Thus for Rabbi Judah, the account ends on a pessimistic note.

For Rabbi Judah b. Ilai, however, the mythic trial has a happy ending. After God rejects the children's initial plea, Elijah the Prophet appears on the scene and teaches the children how to formulate a successful courtroom argument. He advises the children to shift slightly their legal claim to accentuate God's goodness: if God punishes righteous children for the sins of parents, then certainly God should save the parents because of their righteous children, as God's attribute of goodness surpasses His attribute of punishment. In response, God reverses His decision and accepts this more forceful argument,

²² Eccl. Rab. 4:1. For another analysis of this text, see Kensky, *Trying Man, Trying God*, 305–7.

²³ On the rabbinic reception of trans-generational punishment, see A. Marmorstein, *The Doctrine of Merits in Old Rabbinical Literature* (London: Oxford University Press, 1920), and S. Schechter, *Aspects of Rabbinic Theology* (New York: Schocken Books, 1961), 185–89. Whereas Schechter attempts to accentuate the rabbinic denial of trans-generational punishment, Marmorstein attempts to show the punishment's acceptance. (One can see that each author had an agenda, for rarely do they cite the same texts.) For another treatment of this issue, see R. Neudecker, "Does God Visit the Iniquity of the Fathers Upon Their Children?" *Greg* 81 (2000): 5–24.

telling Elijah: “You have taught them a good defense.”²⁴ The parents are then reunited with their children in heaven. According to this view, Scripture alludes to this divine change of heart when the prophet Zechariah declares: “And they [interpreted: the wicked parents] shall live with their children, and shall return [interpreted: from גיהינם to heaven]” (Zech 10:9).

Significantly, this midrash gives humans immensely persuasive power in shaping how God governs the afterlife. Equally striking, this midrash also valorizes an evolving or progressive biblical theology. Initially, as per Ecclesiastes 4:1, God maintained an oppressive punitive dictum in which uncomforted dead children are destined to dwell in heaven without the comfort of their parents. After a successful legal plea, God reverses His decision, thereby mitigating the sad lament of Ecclesiastes, at least to some extent. At some point in mythic time, a new theology arises, one in which “[T]hey [the unrighteous parents] shall live with their children, and shall return [from גיהינם to heaven]” (Zech 10:9).

Like other post-tannaitic texts, this midrash uses the imagery of a divine courtroom to narrate a protest of divine insensitivity. Through this literary device, the righteous children who die young do not critique God in a vacuum, but do so in a highly formalized and structured framework. Their complaint that God unfairly affirms vicarious punishment but not vicarious merit does not merely hang in the air; rather, it becomes part of an official courtroom transcript.

Case 3: גיהינם: Jews and Non-Jews

In rabbinic literature, there are more ways to be saved from the fires of גיהינם than through the death of righteous children. Even those who are not righteous can be saved in other ways, such as through the merit of the forefathers,²⁵ by being buried in the Land of Israel,²⁶ and by being circumcised.²⁷ These methods are considered unmerited because they have not been willfully chosen by the recently deceased person, but have been accomplished through the actions

24 The phrase “you have taught well” (יפה אמרתם) often appears in rabbinic literature before God concedes to a challenge. See, for example, *Exod. Rab.* 44:9; *Num. Rab.* 18:11; and *Deut. Rab.* 2:28.

25 See *Gen. Rab.* 48; *Song Rab.* 8; *Midr. Tanḥ. Vayyera’* 43; and *Midr. Prov.* 6.

26 See *Pesiq. Rab.* 1 and *Yal. Shim’oni Ps.* 874.

27 See *b. ‘Eruvin* 19a; *Midr. Tanḥ. Ḥayye Sarah* 6; *Gen. Rab.* 21, 48; *Exod. Rab.* 19:4; and *Midr. Tanḥ. Lekh Lekha* 27.

of others. It seems, however, that these back-door salvation methods might apply only to Jews but not to non-Jews. Gentiles have no loopholes: if they are righteous they will be saved; if unrighteous, they are destined for גיהנום.

The problematic moral implications of this apparently discriminatory soteriology did not go unnoticed in late rabbinic circles. But rather than openly question the fairness of this theological principle, one late rabbinic text fashions a courtroom scene and inserts a protest against God into the mouths of the litigants' lawyers, the angelic advocates of the Gentiles:

R. El'azar Hammoda'i said: In the time to come, the guardian angels of the nations will come to prosecute Israel before the Almighty, and they will say: Sovereign of the Universe, these worshipped idols and these worshipped idols; these were guilty of sexual immorality and these were guilty of sexual immorality; these shed blood and these shed blood. Why then do these go down to גיהנום while these do not go down? Then God will answer them saying: If that is so, let all the peoples go down with their gods to גיהנום, and so it is written, "*For let all the peoples walk each one in the name of its god*" (Mic 4:5). (*Song Rab.* 2:1)

In this midrashic passage, the angels of the nations, representing the prosecution, criticize God, the judge, for treating the nations of the world unfairly. These angels ask: why do non-Jews go to גיהנום while Jews who are equally culpable do not? While this midrash formally has the gentiles prosecuting Israel, the real target of their complaint is God, not Israel. The angels are not asking for Israel to suffer in גיהנום; rather, they ask for God to treat all his creatures equally.²⁸ After hearing the complaint, God concedes and revises His soteriological policy: sinful Jews and non-Jews alike will face the same horrifying eschatological fate. Unmerited salvation will no longer be possible for anyone.²⁹

The Courtroom as a Method of Protection

I argue that the appropriation of a courtroom setting to frame these and other moral critiques of God in late rabbinic literature serves a dual purpose. First, it

28 Note *Midrash Psalms* (Buber, 15:5), which has the lawyers adding, "is there partiality before God?"

29 In other rabbinic texts, God's response to the angelic critique is different. See *Song Rab.* 8:8 and *Midrash Psalms* 1:20, 22.

sanctions or legitimizes the right of the confronter to challenge God. Litigants and defendants in a court case have the legal right to present their best arguments and claims to secure a successful verdict. Theologically, protests against divine action can be tolerated in this formal context, as courtroom procedure provides claimants with a validating structure and safe space to express their opinions.³⁰

Second, the forensic framework offers protection not only to the one confronting God, but to God Himself. With supreme power and authority, God, as judge alone, determines the verdict. In a sense, even when critiques fundamentally seek to undermine authority and disempower, they are softened by the overwhelming authority and power that judges already wield. In other words, the courtroom structure conceals these midrashic critiques, muting their impact as challenges to God. They are presented as typical court cases: litigants speak their mind; defendants put forth their best arguments to achieve vindication.

The above three midrashic court cases (as well as others)³¹ are far from standard representations of courtrooms. Litigants do not normally lash out at the judge, and the focus of attention is generally not the prior actions of the judge, but only the alleged behavior of the litigants. As we have noted, in these midrashim, while God formally occupies the role of judge, He is actually the defendant. In each of these cases, God is accused of making the wrong decision. Through the proceedings of the trial, God is moved to recognize the problematic nature of His own past deeds and to revise them. A summary of God's decisions: 1) While Leah stands trial, God recognizes His mistake in making Leah's fetus a male. 2) The petitions of the righteous deceased children move God to realize His error in placing their parents in גיהנום. 3) The angelic representatives of the gentiles successfully convince God that His soteriological policy is unfair.

These divine courtroom scenarios more closely resemble a court of appeals than a lower court. In each of these cases, the appellate judge (God) does not reflect on the past behavior of the litigants in isolation, as a trial court judge would do; rather, God primarily reviews the decisions of the lower court. In this monotheistic system, it is God's own earlier decisions that are now being reviewed and questioned. In these specific texts, note how Leah's court case

30 This calls to mind the teaching from the Jerusalem Talmud (*Pe'ah* 9:10) that claims gossip is permitted in a courtroom context.

31 For other critiques of God set in a courtroom context, see *Pesiq. Rab.* 42 and *Exod. Rab.* 43:1.

only occurs once she is pregnant. The court case brought by the deceased righteous children takes place after God places their parents in גיהינם, not before. And the angelic representatives of the gentiles do not bring their case when their clients are in limbo, but only after God has sent them to גיהינם. In short, the litigants in these mythic divine courtrooms are reacting to a prior divine action; they are boldly challenging God to reevaluate His own initial ruling. Yet as these challenges are situated within a seemingly typical courtroom context where God is judge and not defendant, the sting of these critiques is to some extent defanged.

One final note: in the midrashic courtroom case regarding gentiles and גיהינם, one rabbinic sage openly articulates what other texts and sages concealed:

Said R. Reuben: Were it not written in Scripture, it would be impossible to say such a thing, so to speak: “*For by fire will the Lord be judged*” (נשפט) (Isa 66:16): It does not say “the Lord judges” (שופט) but “the Lord is judged” (נשפט). (*Song Rab.* 2:1)

This teaching, attributed to R. Reuben, argues that in this imagined courtroom, God is not really the judge, but the one being judged. To ground his claim exegetically, R. Reuben cites Isaiah 66:16, wherein God is presented as judging Israel with fire. R. Reuben exploits the fact that Scripture uses the unusual passive form for the verb “to judge,” נשפט, instead of the active form, שופט. He reads the verse not as “God judges with fire,” but rather “God who is being judged about the fire.” That is, God is criticized for not sending Israel to a place full of fire, גיהינם. After recognizing the radical nature of his teaching and prefacing his remarks with the oft-stated disclaimer of “had Scripture not said so, it would be impossible to say it,”³² R. Reuben inverts the normal hierarchical structure wherein God judges, and argues that in this mythic encounter, God is the one being judged.

Indeed, R. Reuben recognizes the theological scandal of this bold courtroom scene. He understands that this rabbinic lawsuit is really one in which God is on trial. Rather than being content with this awareness, R. Reuben articulates what readers might have already noticed. The angels for the gentiles do not seek to prosecute Israel for their mishaps but rather to prosecute God for His apparent miscarriage of justice. Buttressed by a grammatical anomaly that scripturally legitimizes this midrashic reading, R. Reuben produces the most

32 On this phrase, see M. Halbertal, “If It Were Not a Written Verse.”

radical critique of divine conduct. Not only do the angels critique God, but they do so from a position of authority and strength: in this midrash at least, they have become God's veritable judges.³³

33 For another instance in which God plays the role of litigant, see *Exod. Rab.* 43:4. “‘*And Moses pleaded*’ (Exod 32:11): What does this mean? Said R. Berekiah in the name of R. Ḥelbo, who said it in the name of R. Isaac: That he [Moses] absolved his Creator of His vow. A proof? When Israel made the Calf, Moses began to persuade God to forgive them; but God said: Moses, I have already taken an oath that ‘*He that sacrifices unto the gods . . . shall be utterly destroyed*’ (Exod 22:19). I cannot retract an oath which has proceeded from My mouth. Moses rejoined: Lord of the Universe! Did You not grant me the power of annulment of oaths by saying, ‘*When a man vows a vow unto the Lord, or swears an oath to bind his soul with a bond, he shall not break his word*’ (Num 30:3); that is, he himself cannot break his word, but a scholar can absolve his vow if he [the oath taker] consults him [the scholar]. If a scholar pronouncing decisions desires that others should respect his decision, he must be the first to observe it. Since You have commanded me concerning the annulment of vows, it is only right and proper that You should annul Your vow as You have commanded me to annul the vows of others. Whereupon he wrapped himself in his cloak and seated himself in the posture of a Sage, and God stood before him as one asking [for the annulment of] his vow; for so it says, ‘*Then I sat in the mountain*’ (Deut 9:9).” For other examples, see *Lev. Rab.* 10:5 and *Song Rab.* 2:9.

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